

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921 1922

No. 617. 205

THE BANK OF AMERICA, PLAINTIFF IN ERROR,

v8.

WHITNEY CENTRAL NATIONAL BANK.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 15, 1921.

(28,572)

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OCTOBER TERM, 1921.

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IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR
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United States of America, S. S.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

To the Judges of the District Court of the United
States, for the Southern District of New York.

GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment or final order of a plea which is in the District Court, before you, or some of you, between **THE BANK OF AMERICA**, Plaintiff, and **WHITNEY-CENTRAL NATIONAL BANK**, Defendant, a manifest error hath appeared, to the great damage of the said The Bank of America, as is said and appears by its complaint, **We**, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, **Do Command You**, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the **SUPREME COURT OF THE UNITED STATES**, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 15th day of November, 1921, that the record and proceedings aforesaid being inspected the said **SUPREME COURT OF THE UNITED STATES** may

cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable WILLIAM H. TAFT, Chief Justice of the United States, this 1st day of November, in (SEAL) the year of our Lord one thousand nine hundred and twenty-one and of the Independence of the United States the one hundred and forty-fifth.

ALEX GILCHRIST, JR.,
Clerk of the District Court of the United States of America, for the Southern District of New York in the Second Circuit.

The foregoing writ is hereby allowed:

JULIAN W. MACK,
U. S. Circuit Judge.

The foregoing writ of error is endorsed: "District Court of the United States for the Southern District of New York, The Bank of America, Plaintiff-in-Error vs. Whitney-Central National Bank, Defendant-in-Error. Writ of Error. Rushmore, Bisbee & Stern, Attorneys for Plaintiff-in-Error, 61 Broadway, Borough of Manhattan, New York City United States District Court S.D. of N. Y. Filed Nov. 1, 1921."

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

—o—

THE BANK OF AMERICA, *Plaintiff*

against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Affidavit of Summons and Complaint on Corporation

Action No. 1—L. 25, Page 204.

State of New York,
County of New York, ss.:

Robert E. J. Corcoran, being duly sworn, says that he is over 21 years of age; and that on the 13th day of April, 1921, on the sidewalk at the Northwest Corner of Nassau and Pine Streets, Borough of Manhattan, City and State of New York, he served the summons and notice in this action, a copy whereof is hereto annexed, on the defendant by delivering copies of the same to John E. Bouden, Jr., personally, and leaving the same with him; he further says that he knew the said John E. Bouden, Jr. to be at that time the President of Whitney-Central National Bank, the corporation mentioned and described in said summons as the defendant in this action.

Sworn to before me this
15th day of April, 1921.

ROBT. E. J. CORCORAN.

CHARLES S. MARTIN,
(Seal) Notary Public,
New York County No. 68
New York Register No. 2275

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

To the above-named Defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

WITNESS, the Hon. Learned Hand, Judge of the
(Seal) District Court of the United States for the Southern
District of New York, at the City of New York, this
12th day of April, in the year one thousand nine
hundred and twenty-one.

ALEX GILCHRIST, JR., Clerk.

RUSHMORE, BISBEE & STERN,
Plaintiff's Attorney,
Office and Postoffice Address
61 Broadway,
Borough of Manhattan,
New York City.

The foregoing summons and affidavit are endorsed: "United
States District Court Southern District of New York The

Bank of America, Plaintiff, against Whitney Central National Bank, Defendant. Summons and Notice. Rushmore, Bisbee & Stern, Plaintiff's Atty's, 61 Broadway, Borough of Manhattan, City of New York. To the defendant within named: Take notice that upon default judgment will be taken for the sum of \$182,238.68 Dollars, in money, with interest from the 28th day of October, 1920, besides costs. Rushmore, Bisbee & Stern, Plaintiff's Attorneys. United States District Court S.D. of N. Y. Filed April 15, 1921."

—o—

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed affidavit of John E. Bouden, Jr., verified the 16th day of April, 1921, and upon the summons filed in the office of the Clerk of this court, the undersigned will move this court at a stated term thereof to be held in the Post Office Building, in the Borough of Manhattan, City of New York, on the 22nd day of April, 1921, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order setting aside and declaring null and void the attempted service of the summons herein on the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, on the ground that such attempted service was unauthorized, unlawful and null and

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void and that this court did not by such attempted service acquire jurisdiction of the defendant, and for such other and further relief as to the court may seem just.

Dated April 16th, 1921.

Yours, &c.,

GRIGGS, BALDWIN & BALDWIN,
Appearing specially herein for the sole and
single purpose of moving to set aside at-
tempted service of summons herein upon
said defendant,
Office and Post Office Address,
No. 27 Pine Street,
Borough of Manhattan,
City of New York.

To

MESSRS. RUSHMORE, BISBEE & STERN,
Attorneys for Plaintiff,
61 Broadway,
New York City.

The foregoing Notice of Motion with the affidavit accompanying it is endorsed: "United States District Court for the Southern District of New York. The Bank of America, Plaintiff, against Whitney Central National Bank, Defendant, Notice of Motion and Affidavit. Griggs, Baldwin & Baldwin, appearing specially etc. for defendant 27 Pine Street New York City United States District Court S. D. of N. Y. Filed May 4, 1921."

At the April Term of the United States District Court for the Southern District of New York, held in New York City, at the Post Office Building, on April 29, 1921.

Present: HON. JULIAN W. MACK, Circuit Judge.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

The motion made herein by the defendant for an order setting aside and declaring null and void the service of summons herein, having duly come on for hearing; upon reading and filing the affidavit of John E. Bouden, Jr., verified April 16, 1921, in support of the motion and the affidavits of Henry Root Stern, verified April 29, 1921, Edward W. Russell, verified April 28, 1921, Amandus W. Austin, verified April 28, 1921, Henry J. Schuler, verified April 28, 1921, Edward C. Delafield, verified April 29, 1921, Nathan A. Smyth, verified April 29, 1921, and Edward W. Russell, verified April 29, 1921, and the additional affidavit of Henry Root Stern, verified April 29, 1921, in opposition to the motion.

And having heard Martin Conboy, Esq., of Messrs. Griggs Baldwin & Baldwin, specially appearing in behalf of the defendant, in support of the motion and Henry Root Stern, Esq., in behalf of the plaintiff in opposition thereto.

IT IS HEREBY ORDERED, that the questions of fact arising upon said motion be and the same hereby are referred to E. Henry Lacombe, Esq., as Special Master, to take the proofs thereon and report the same with his finding thereon to this court;

AND IT IS FURTHER ORDERED, that the further hearing of said motion be adjourned until the next motion day after the filing of his report by the Special Master, and that the time within which the defendant may appear generally herein be and the same hereby is adjourned until one week after the entry of the order of this court upon said motion.

JULIAN W. MACK,
C. J.

The foregoing order is endorsed: "United States District Court Southern District of New York. The Bank of America, Plaintiff, against Whitney Central National Bank, Defendant. Action No. 1. Order Appointing Special Master. Rushmore, Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed May 19, 1921."

At a Term of the District Court of the United States for the Southern District of New York, held at the Federal Building, in the Borough of Manhattan, City of New York, Southern District of New York and State of New York, on the 4th day of August, 1921.

Present: HON. JULIAN W. MACK, Circuit Judge.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

A motion herein having been made by the defendant, appearing specially herein for the sole and single purpose of moving to set aside the attempted service of the summons herein upon the defendant, for an order setting aside and declaring null and void the attempted service of the summons herein upon the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, on the ground that such attempted service was unlawful and null and void, and that this Court did not by such attempted service acquire jurisdiction of the defendant, and said motion having duly come on for hearing, and it having been thereupon ordered that the questions of fact arising upon said motion be referred to E. Henry Lacombe, Esq., as Special Master, to take the proofs thereon and report the same with his finding thereon to this Court, and that the further hearing of said motion be adjourned until after the filing of said report by said Special Master, said Special Master having made and filed his report, and said motion having duly further come on for hearing,

Now, Upon reading the said notice of motion dated April 16, 1921, and the affidavit of John E. Bouden, Jr., verified on said day, heretofore filed in this action in support of said motion, and the affidavits of Henry Root Stern, verified April 29, 1921, Edward W. Russell, verified April 28, 1921, Amau-

dus W. Austin, verified April 28, 1921, Henry J. Schuler, verified April 28, 1921, Edward C. Delafield, verified April 29, 1921, Nathan A. Smyth, verified April 29, 1921, and Edward W. Russell, verified April 29, 1921, and the additional affidavit of Henry Root Stern, verified April 29, 1921, in opposition to the said motion, and the order hereinabove referred to, dated April 29, 1921, all heretofore filed herein; and upon reading the report of E. Henry Lacombe, Esq., Special Master, dated July 29, 1921, filed herein on said day, and the testimony filed therewith and the exhibits introduced before said Special Master, and thereafter having heard Martin Conboy, Esq., of Messrs. Griggs, Baldwin & Baldwin, specially appearing on behalf of the defendant in support of said motion, and Henry Root Stern, Esq., in behalf of the plaintiff in opposition thereto, it is

ORDERED, That said motion be and it hereby is granted and that said attempted service of the summons herein in the above entitled action on the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, be and it hereby is set aside and declared null and void, on the ground that such attempted service was unauthorized, unlawful and null and void, and that this Court did not by such attempted service acquire jurisdiction of the defendant herein.

Enter.

J. W. MACK,
U. S. Cir. J.

The foregoing order is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff, against The Whitney Central National Bank, Defendant. Order. L. 25-P. 204. Rushmore, Bisbee & Stern, Attorneys for plaintiff 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed Aug. 4, 1921."

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*

against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

In this cause I hereby certify that the order setting aside and declaring null and void the attempted service of the summons herein by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, is based solely on the ground that the defendant is a corporation organized under the National Banking Law, located in the City of New Orleans, Louisiana, where it has its bank, principal office and place of business, and that the defendant was not at the time of said attempted service of said summons, nor at any time, doing business in the Southern District of New York, in the State of New York, of such a nature as to make the defendant subject to the service of process on its President in said Southern District of New York, and the motion for an order setting aside and declaring null and void such attempted service of said summons was granted only for the reasons above stated. This certificate is made conformably to Judicial Code, Section 238, and this certificate will be made a part of the record and sent up as part of the proceedings.

Dated, this 4th day of August, A.D. 1921.

JULIAN W. MACK

Circuit Judge holding District Court
of United States for Southern Dist. of N. Y.

The foregoing certificate is endorsed: "District Court of the United States for the Southern District of New York The Bank of America, Plaintiff, against The Whitney Central National Bank, Defendant. Certificate. L. 25-P. 204 Rushmore, Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed Aug. 4, 1921."

UNITED STATES DISTRICT COURT
For the Southern District of New York

THE BANK OF AMERICA, PLAINTIFF,
against

WHITNEY-CENTRAL NATIONAL BANK, DEFENDANT.

Action No. 1

L. 25, Page 204.

BE IT REMEMBERED that this cause in this court came on for hearing at a term thereof held on the 29th day of April, 1921, before the Honorable Julian W. Mack, Circuit Judge, presiding, on the motion of the above named defendant, appearing specially herein for the sole and single purpose of moving to set aside the alleged attempted service of the summons herein upon the said defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, and thereupon and thereafter the following proceedings were had, to wit:

(a)

The defendant, to sustain the motion, offered the following papers and proofs:

I. The notice of motion in this action by said defendant, so appearing, wherein and whereby notice was given to the plaintiff that the defendant would move the court herein

"for an order setting aside and declaring null and void the attempted service of the summons herein on the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, on the ground that such attempted service was unauthorized, unlawful and null and void and that this court did not by such attempted service acquire jurisdiction of the defendant, and for such other and further relief as to the court may seem just."

(2.) The affidavit of John E. Bouden, Jr., entitled in this action, duly sworn to, verified the 16th day of April, 1921, wherein John E. Bouden, Jr., swore:

"That he is and for some time past has been president of the defendant, which is and ever since its organization has been a national bank organized and existing under and by virtue of the laws of the United States relating to national banks and is located in and has its bank, principal office and place of business in the City of New Orleans, State of Louisiana, and has never been located or had an office or place of business elsewhere.

"That the defendant has never been authorized to do business within the State of New York, has never applied for permission to do business in the State of New York, has never maintained an office or agent for the transaction of any business in the State of New York, and is not now and was not at any of the time herein mentioned doing business in the State of New York.

"That on the 13th day of April, 1921, service of summons in this action was attempted to be made on the defendant by delivering to and leaving with deponent a copy of said summons in the Borough of Manhattan, City, County and State of New York."

The said notice of motion and affidavit are endorsed: "United States District Court for the Southern District of New York. The Bank of America, Plaintiff, against Whitney Central National Bank, Defendant, Notice of Motion and Affidavit. Griggs, Baldwin & Baldwin appearing specially, etc. for defendant, 27 Pine Street, New York City United States District Court S. D. of N. Y. filed May 4, 1921".

(b)

The plaintiff in opposition to the said motion offered the following papers and proofs:

I. Affidavit of Henry Root Stern entitled in this action, duly sworn to, verified April 28, 1921, wherein he swore:

"I am a member of the firm of Rushmore, Bisbee & Stern, attorneys for the plaintiff herein. I am also a Director of The Bank of America, plaintiff herein. The said plaintiff is incorporated under the laws of the State of New York and has its principal place of business in the City and County of New York.

"The defendant bank, as shown by the affidavit of its President herein, has its principal office and place of business in

the City of New Orleans, State of Louisiana. This action is brought in the Federal Court only on the ground of diversity of citizenship.

"Deponent is informed and believes that the defendant bank is doing business and has for some time been doing business in the State and County of New York and that its President, at the time he was served with the summons herein, was in the City of New York for the purpose of transacting business in behalf and as President of the defendant bank.

"The sources of deponent's information are the affidavits of Edward W. Russell, Amandus W. Austin, Henry J. Schuler and Edward C. Delafield, and Nathan C. Smyth, which are hereto attached.

"Inasmuch as the assertion contained in the affidavit of John E. Bouden, Jr., upon which the motion to vacate the service of the summons herein is based, that the defendant is not and has not been doing business in the State of New York are mere conclusions, and as the facts upon which a determination of the question of whether or not the defendant has been and is doing business in this city are peculiarly within the knowledge of the defendant and the correspondents of the defendant mentioned in the affidavits annexed hereto and can not otherwise be ascertained with accuracy and fullness the plaintiff prays that the question be referred to a Special Master to take testimony and that pending the report of such Special Master the decision of this motion remain in abeyance."

II. Affidavit of Edward W. Russell entitled in this action duly sworn to, verified April 28, 1921, wherein he swore:

"On the 29th day of April, 1921, I called at the Chase National Bank at its place of business in the City and County of New York, and was informed by Mr. William P. Holly, its cashier, that the Chase National Bank has for some time past carried and now carries a deposit account in this City for the Whitney Central National Bank and has been and is a correspondent in this City of the Whitney Central National Bank. I asked Mr. Holly if he would be willing to make an affidavit to such effect and he declined to do so."

III. Affidavit of Edward W. Russel entitled in this action duly sworn to, verified April 28, 1921, wherein he swore:

"I am an Assistant Cashier of The Bank of America, the plaintiff herein. I know personally Mr. John E. Bouden, Jr., President of the Whitney Central National Bank, defendant

herein, and was present when he was served with the summons in this action. Just prior to the service of the said summons I was in the premises of the Federal Reserve Bank of New York and saw Mr. Bouden in conversation with Mr. Kenzel, Deputy Governor of such Bank. I watched him in such conversation for nearly an hour.

"On the 21st day of April, 1921, I called at the Liberty National Bank at its place of business in the City and County of New York, and was informed by Mr. Trumbull, its Assistant Cashier, that the Liberty National Bank has for some time past carried and now carries a deposit account for the defendant and handles such account as the correspondent of the defendant bank.

"On the said April 21st, I saw Mr. Lake, Assistant Cashier of the Mechanics and Metals National Bank at its banking house in New York City. I was informed by him and believe that the said bank has been and is now acting as correspondent in New York City for the Whitney Central National Bank and has loaned money to and carries a deposit for the Whitney Central National Bank, that Mr. Bouden, President of the defendant bank, has been in the habit of coming frequently to New York and seeing the officers of the Mechanics and Metals Bank.

"On the said 21st day of April, I saw Mr. Higgins, Assistant Cashier of the National Bank of Commerce, at its banking house in New York City. Mr. Higgins informed me that his bank acts as correspondent for the Whitney Central National Bank, but he was unable to give me details as to the exact functions which his bank performs for the defendant in this state. I then saw Mr. Louis A. Keidel, Vice-President of the National Bank of Commerce, who informed me that they act as a depository and correspondent for and also loan money to the Whitney Central National Bank. I asked Mr. Keidel for details as to what they do for the Whitney Central National Bank and he would inform me only to the extent of stating that they act in the usual way that a bank ordinarily acts for out of town correspondents.

"I am informed and believe that the Hanover National Bank of the City of New York has for a long time acted and still acts as correspondent and agent for the defendant Bank in New York City. The sources of my information are as follows:

"In April 1920, The Bank of America received through Messrs. Ham & Seymour, of New York City, two certain let-

ters of credit signed by the defendant bank, true copies of each of which are annexed hereto. By the terms of the said letters of credit drafts drawn under them were payable at the Hanover National Bank. On the 20th and 21st days of October, 1920, as is shown by the affidavits of A. W. Austen and H. J. Schuler, two certain drafts drawn under and in accordance with the said letters of credit were presented at the said Hanover National Bank. I refer to said affidavits as to what occurred on that occasion.

"On the 26th day of April, 1921, I called at the office of the Hanover National Bank in the City and County of New York and saw Mr. Suydam, a Vice-President and Manager of its Foreign Department. I asked Mr. Suydam if he would give me a general idea of the various capacities in which the Hanover National Bank acts as correspondent for the Whitney Central National Bank and whether the Hanover Bank is the principal correspondent in New York City of the Whitney Central National Bank. Mr. Suydam stated that the Hanover National Bank is the principal correspondent of the Whitney Central National Bank in New York City, but that he did not care to tell me all of the various capacities in which they act for the Whitney Central National Bank as such correspondent; that as the correspondent for the defendant Bank they engage in many transactions, some of which are of a confidential nature and others of a more general character. He was unwilling to state whether the Hanover Bank has acted in the capacity of payee for the defendant bank under letters of credit other than those of which copies are hereto attached. I asked him if he would have any objection to making an affidavit as to the various capacities in which the Hanover National Bank acts as correspondent for the Whitney Central National Bank and he stated that he would not make such an affidavit, but would be willing to answer specific questions which I might ask relating to the Bank of America's transactions with the defendant bank, providing he considered it possible to do so and that he would not violate the confidential relationship between his bank and the defendant bank. I said to him in substance, 'I surmise that through your Foreign Department you buy and sell exchange and handle such various types of foreign transactions for the Whitney Central National Bank as is customary with New York banks which act as correspondents for other banks in such transactions?' He replied, 'Yes, Our foreign Department's relations with the Whitney Central are very active.'

"I understand that among other things it is customary for New York Banks which act as correspondents for out of town banks in foreign exchange business to buy and sell and otherwise negotiate and to effect collections of drafts and acceptances, both domestic and foreign, in behalf of and as the agent of the out of town bank.

"On April 26th I called at the office of J. S. Bache & Company, bankers and brokers in New York City, and there saw a Mr. Moses who is at the head of their Margin Department. He informed me that J. S. Bache & Company have done business with the Whitney Central Bank in buying and selling securities on a cash basis and effecting deliveries of securities in New York City in behalf of the defendant bank.

"Owing to the confidential relationships existing between the banks, whose officers I have interviewed as above stated, and the defendant bank, it is not in my belief possible to get any of their officers to make affidavits setting forth in full all of the details of the business which they transact in New York as correspondents and agents for the defendant bank. It is my belief that the only way in which such information can be secured from them is to subpoena the officers of such banks to testify in a proceeding where they will be under legal compulsion to tell in full all of the facts known to them."

IV. Affidavit of Amandus W. Austin entitled in this action duly sworn to, verified April 28, 1921, wherein he swore:

"I am in the Foreign Department of The Bank of America, plaintiff herein. On or about the 20th day of October, about two o'clock in the afternoon, I called at the Hanover National Bank in the City of New York having with me two drafts, each for \$24,640. drawn under and in accordance with the terms of the letters of credit of which copies are annexed hereto, to the order of The Bank of America by Ham & Seymour upon the Whitney Central National Bank, payable at the Hanover National Bank, New York. I also had with me in connection with such drafts the various documents as required by the said letters of credit.

"Upon arriving at the Bank and presenting the drafts, I was referred to Assistant Manager Kempf of the Foreign Department of the Hanover Bank. I showed Mr. Kempf the papers and he looked them over. I then showed him a bill of lading I had in my hand, which he took to make a photographic copy of. He asked me to call back but I stated I

would wait and did so for about an hour. Mr. Kempf then brought me the papers back and stated they were not in order. I asked him what was wrong with them and he said, 'I can not tell you. You will have to see our Vice-President, Mr. Suydam.' I then spoke to Mr. Suydam. He said, 'You heard what we said. We refused them.' I asked him what was wrong with them and he said, 'You can read, why don't you read the credit and you will find out that the papers are not in accordance with the terms of the credit.' I then said, 'Out of courtesy between banks I think you ought to tell us what is wrong with the papers.' He said, 'No. I told you if you would read the credit you would find out what was wrong with it.' I asked if it was some technicality and he said, 'Now, look out what you are saying.' I said that I did not mean anything but that when papers were presented to us we usually put on a memorandum to show what was wrong in order to give the other bank a chance to straighten them out.' He said, 'Well, you have heard me, you had better go along.' So I left."

V. Affidavit of Henry J. Schuler entitled in this action duly sworn to, verified April 28, 1921, wherein he swore:

"I am an Assistant Cashier of The Bank of America, the plaintiff herein. I have read the affidavit of Amandus W. Austen. On October 21, 1920, I called at the place of business of the Hanover National Bank of the State and County of New York with the drafts which are mentioned in Mr. Austen's affidavits and the shipping documents relating thereto, including insurance certificates which Mr. Austen had not had with him on the 20th. I presented these documents to Mr. Suydam. He said to me, 'Those are the papers you had around here yesterday afternoon?' I said, 'Yes.' Mr. Suydam said, 'Your papers were not in order.' I said, 'I now have the insurance certificates which were left on the desk inadvertently.' 'Well,' he said, 'I do not care to look at the papers. We have definite instructions from the Whitney Central National Bank not to pay.' I then asked him wherein the papers were not in order and he said, 'If you have two eyes you can see.' I said, 'It is customary between banks if a bank thinks the papers are defective to explain why.' He said, 'Well, the papers are not in order and we have definite instructions not to pay and if you understand English you know what that means.' He said that they were only correspondents and had to act under instructions from the Whitney Central National Bank.

"The interview then terminated and I took away the drafts and papers."

VI. Affidavit of Edward C. Delafield, entitled in this action duly sworn to, verified April 29, 1921, wherein he swore:

"I am president of The Bank of America, the plaintiff herein. The Bank of America is incorporated under the laws of the State of New York and its principal place of business is located at 44 Wall Street, in the City and County of New York.

"This action is brought against the defendant to recover damages for breach of contract.

"I am informed and believe that at the time when the summons herein was served upon John E. Bouden, Jr., the President of the defendant, he was in New York City engaged upon, and for the purpose of transacting the business of the defendant bank.

"On April 27, 1921, I called upon Mr. Pike, Manager of New Orleans and other southern business of the National City Bank, of 55 Wall Street. He informed me and I believe that the National City Bank is a New York correspondent of the Defendant, loans money to and carries a deposit for the Defendant, and, as Defendant's correspondent, buys and sells foreign exchange for the defendant in New York City and County."

VII. Affidavit of Nathan A. Smyth entitled in this action duly sworn to, verified April 29, 1921, wherein he swore:

"I am an attorney at law associated with Messrs. Rushmore, Bisbee & Stern, attorneys for the plaintiff herein.

"On April 28, 1921, Mr. Edward A. Pfeffer, an attorney at law of the City of New York and the attorney for Schilthuis American Trading Co., of New York City, exhibited to me the original of a letter of credit issued by the Whitney Central National Bank to the said Schilthuis American Trading Co., under date of May 1, 1920, of which a true copy is annexed hereto marked Exhibit A. Mr. Pfeffer further exhibited to your deponent the original of a letter from the defendant addressed to the said Schilthuis American Trading Co., dated May 10, 1920, of which a true copy is annexed hereto marked Exhibit B, and a letter from the Hanover National Bank of the City of New York to the said Schilthuis American Trading Co., dated May 17, 1920, of which a true copy is annexed hereto marked Exhibit C. Mr. Pfeffer stated that

he is willing to produce the said original documents before the Court in response to the subpoena or request from the Court."

To said affidavit there were annexed the following exhibits:

"EXHIBIT A.

Letter of Credit No. 4371.

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans, La.

New Orleans, La., May 1, 1920.

Messrs. Schilthuis American Trading Co.,
New York, N. Y.

Dear Sirs:

We hereby authorize you to value on The Whitney Central National Bank, New Orleans, at sight, payable at the Hanover National Bank, New York, not exceeding in the aggregate Six hundred and ninety thousand dollars.....to be used by you for invoice cost of 1500 tons Java Sugars at 20½c CIF New York, Dutch Standard 25 or better.
to be purchased for account of Messrs. Wm. K. Seago & Co.,
New Orleans

or whom it may concern, and to be shipped to New York by steamers during May-June-July, 1920

The drafts must be drawn and Bills of Lading dated in New York prior to the 30th day of Oct. 1920, and advice thereof given by you in original and duplicate, such advice to be accompanied by bill of lading, filled up to order of The Whitney Central National Bank, New Orleans, with abstract of invoice endorsed thereon, or a copy of invoice accompanying the said bill of lading for the property shipped as above. All the bills of lading issued, except one retained by the Captain of the vessel carrying the cargo, are to accompany the drafts. The original invoice, properly certified by the United States Consul, accompany draft.

And we hereby agree with the drawers, endorsers and bona fide holders of bills drawn in compliance with the terms of this Credit, that the same shall be duly honored on presentation at the office of The Whitney Central National Bank, New Orleans.

\$690,000.00.....

We are, Dear Sirs,

Yours very truly,

WHITNEY CENTRAL NATIONAL BANK,
FOREIGN EXCHANGE DEPARTMENT.

N. B.—Drafts must state on their face that they are drawn under Whitney-Central National Bank Credit.

(Signed) Royal R. Bartian,
Manager.

No. 4371 dated May 1st, 1920.
Insurance to accompany draft."

"EXHIBIT B.

THE HANOVER NATIONAL BANK
Of the City of New York.

New York, May 17th, 1920.

Messrs. Schilthuis American Trading Co.,
New York, N. Y.

Gentlemen:—

Referring to Letter of Credit No. 4371 issued in your favor by the Whitney Central National Bank, New Orleans, La., account of Wm. K. Seago & Co., New Orleans, for \$690,000.00,—

We are advised by the Whitney Central National Bank that this credit has been amended to read:

"Drafts to be accompanied by the usual shipping documents i.e., invoice, consular invoice, bill of lading and insurance certificate covering 1500 tons Java sugars at 20½c CIF New York, Dutch standard 25 or better, shipments to be made during May, June, July 1920."

Kindly take notice of above and acknowledge receipt of this letter to us.

Yours very truly,

p.p. Chas. R. Kempf
Asst. Manager, Foreign Dept.

JFS:HM"

"EXHIBIT C.

WHITNEY CENTRAL NATIONAL BANK.

New Orleans, La. May 10, 1920.

Messrs. Schilthuis American Trading Co.
New York, New York.

Dear Sirs:

Referring to Letter of Credit No. 4371 issued in your favor for account of Messrs. Wm. K. Seago & Co., New Orleans for \$690,000.00.

We are advised by Messrs. Seago & Co. that you desire this credit issued payable in New York, and in accordance with their request have amended the credit accordingly and have wired you today to that effect, as follows:

“Referring our credit forty three seventy one your favor account Seago & Co., have amended credit to read payable through Hanover National Bank New York confirming by letter.”

from which you will note that drafts drawn against this credit are to be presented to the Hanover National Bank, New York for payment for our account.

Yours very truly,

Royal R. Bastian
Manager Foreign Dept.

RRB:GJB”

New Orleans, La., April 17, 1920.

Messrs. Ham & Seymour,
New York, New York.

Dear Sirs:

We hereby authorize you to value on The Whitney Central National Bank, New Orleans, at sight, payable at the Hanover National Bank, New York, not exceeding in the aggregate Two Hundred Forty Six Thousand, Four Hundred Dollars to be used by you for invoice cost of 500 tons Java White Sugar at 22c per pound duty paid, to be purchased for account of Messrs. John Barkley & Co. Ltd., New Orleans, or whom it may concern and to be shipped to New York, 50 tons July, 1920, 135 tons July August, 1920, 315 tons August September 1920.

The drafts must be drawn and Bills of Lading dated in New York prior to 15th day of December, 1920, and advice thereof given by you in original and duplicate, such advice to be accompanied by Bills of Lading, Customhouse Permit and Delivery Order filled up to order of The Whitney Central National Bank, New Orleans, La., with abstract of invoice endorsed thereon, or a copy of invoice accompanying the said Letter of Credit No. 4333.

Bill of Lading for the property shipped as above.

WHITNEY CENTRAL NATIONAL BANK
OF NEW ORLEANS, LA.

All the Bills of Lading issued, except one to be mailed to us and one to be retained by the Captain of the vessel carrying the cargo, are to accompany the drafts. The original invoice, properly certified by the United States Consul, to be forwarded to us.

We hereby agree with the drawers, endorsers and bona fide holders of bills drawn in compliance with the terms of this Credit, that the same shall be duly honored on presentation at the office of the Whitney Central National Bank, New Orleans.

\$246,400.00

We are Dear Sirs,

Yours very truly,

WHITNEY CENTRAL NATIONAL BANK
FOREIGN EXCHANGE DEPARTMENT.

N.B. Drafts must state on their face that they are drawn on Whitney Central National Bank Credit.

Royal R. Bastian,
Manager.

No. 4333, dated April 17, 1920.

Insurance by Seller."

Letter of Credit No. 4334.

WHITNEY CENTRAL NATIONAL BANK
OF NEW ORLEANS, LA.

New Orleans, La., April 17, 1920.

Messrs. Ham & Seymour,
New York, New York.

Dear Sirs:

We hereby authorize you to value on The Whitney Central National Bank, New Orleans, at sight, payable at the Hanover National Bank, New York, not exceeding in the aggregate Two Hundred Forty Six Thousand, Four Hundred Dollars to be used by you for invoice cost of 500 tons Java White Sugar at 22c per lb. duty paid, to be purchased for account of Messrs. John Barkley & Co. Ltd., New Orleans, or whom it may concern and to be shipped to New York, 50 tons July, 1920, 135 tons July, August, 1920, 315 tons August September 1920.

The drafts must be drawn and Bills of Lading dated in New York prior to 15th day of December, 1920, and advice thereof given by you in original and duplicate, such advice to be accompanied by Bills of Lading, Customhouse Permit and Delivery Order filled up to order of The Whitney Central National Bank, New Orleans, La., with abstract of invoice endorsed thereon, or a copy of invoice accompanying the said Bill of Lading for the property shipped as above.

All the Bills of Lading issued, except one to be mailed to us and one to be retained by the Captain of the vessel carrying the cargo, are to accompany the drafts. The original invoice, properly certified by the United States Consul, to be forwarded to us.

We hereby agree with the drawers, endorsers and bona fide holders of bills drawn in compliance with the terms of this Credit, that the said shall be duly honored on presentation at the office of the Whitney Central National Bank, New Orleans.
\$246,400.00 We are Dear Sirs,

Yours very truly,

WHITNEY CENTRAL NATIONAL BANK
FOREIGN EXCHANGE DEPARTMENT.

N.B. Drafts must state on their face that they are drawn on Whitney Central National Bank Credit.

Royal R. Bastian,
Manager.

No. 4334, dated April 17, 1920.

Insurance by Seller."

VIII. Affidavit of Henry Root Stern entitled in this action duly sworn to, verified April 29, 1921, wherein he swore:

"On Thursday, April 28, 1921, I had a telephone conversation with Mr. Frank J. Murphy of the firm of J. S. Bache & Co., with reference to his making an affidavit to be used on the motion to set aside the service of the summonses in the actions between the Bank of America and the Whitney Central National Bank pending in this District. In answer to my questions, Mr. Murphy stated that the firm of J. S. Bache & Co., had been acting for several years for the Whitney Central National Bank as its brokers in the purchase of securities in New York City for the account of the Whitney Central National Bank.

That such transactions had been continuous and recent, but that owing to the close relationship between the Whitney Central National Bank and his firm, he did not wish to make any affidavit concerning the matter and in fact, that I might quote him as stating that he refused to make such affidavit."

The foregoing affidavits referred to in paragraphs I to VIII, inclusive, last preceding, are endorsed: "United States District Court for the Southern District of New York. The Bank of America. Plaintiff. against Whitney Central National Bank, Defendant. Action No. 1. Affidavits in opposition to motion. Rushmore, Bisbee & Stern, Attorneys for Plaintiff. 61 Broadway, Borough of Manhattan, New York City. United States District Court S. D. of N. Y. filed April 29, 1921."

(c)

Thereupon the court, after hearing argument by counsel for the plaintiff and for the defendant appearing specially for the purposes of the motion only, and upon consideration thereof, on the 29th day of April, 1921, made the following order entitled in this action which was filed and entered on the 19th day of May, 1921, and which, eliminating the caption, read as follows:

"The motion made herein by the defendant for an order setting aside and declaring null and void the service of summons herein, having duly come on for hearing; upon reading and filing the affidavit of John E. Bouden, Jr., verified April 16, 1921, in support of the motion and the affidavit of Henry Root Stern, verified April 29, 1921, Edward W. Russell, verified April 23, 1921, Amandus W. Austin, verified April 28, 1921, Henry J. Schuler, verified April 28, 1921, Edward C. Delafield, verified April 29, 1921, Nathan A. Smyth, verified April 29, 1921, and Edward W. Russell, verified April 29, 1921, and the additional affidavit of Henry Root Stern, verified April 29, 1921, in opposition to the motion.

"And having heard Martin Conboy, Esq., of Messrs. Griggs, Baldwin & Baldwin, specially appearing in behalf of the defendant, in support of the motion and Henry Root Stern, Esq., in behalf of the plaintiff in opposition thereto.

"IT IS HEREBY ORDERED, that the questions of fact arising upon said motion be and the same hereby are referred to E. Henry Lacombe, Esq., as Special Master, to take the proofs thereon and report the same with his finding thereon to this court;

"AND IT IS FURTHER ORDERED, that the further hearing of said motion be adjourned until the next motion day after the filing of his report by the Special Master, and that the time within which the defendant may appear generally herein be and the same hereby is adjourned until one week after the entry of the order of this court upon said motion.

(Sgd) Julian W. Mack
C. J."

The said order is endorsed: "United States District Court Southern District of New York. The Bank of America, Plaintiff, against Whitney Central National Bank, Defendant. Action No. 1. Order appointing Special Master Rushmore, Bisbee & Stern, Attorneys for Plaintiff. 61 Broadway, Borough of Manhattan, New York City. United States District Court S. D. of N. Y. filed May 19, 1921."

(d)

Pursuant to said order last mentioned whereby it was referred to E. Henry Lacombe, Esq., as Special Master to take the proofs on the questions of fact arising upon said motion and report the same with his findings thereon to the court, the case duly came on for hearing before him. Plaintiff appeared by Rushmore, Bisbee & Stern, its attorneys, and Henry Root Stern, its counsel, and defendant, specially appearing for the purposes of the motion only, appeared by Griggs, Baldwin & Baldwin, its attorneys, and Martin Conboy and J. Blanc Monroe, its counsel.

In the course of the hearings before said Special Master counsel for the plaintiff did take and allege sundry exceptions to the rulings of the Special Master which said exceptions are hereinafter set forth herein.

The hearings were taken on May 23, 1921, and on subsequent days to which adjournments had been duly taken, and thereupon the parties to maintain the issues on their part introduced oral and documentary testimony and evidence and proceedings were thereupon had as follows:

WILLIAM ARTHUR SUYDAM, a witness called on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct Examination by Mr. Stern:

Q1. What is your full name? A. William Arthur Suydam.

Mr. Conboy: In noting the appearance, your Honor, I neglected to state that our appearance, is special on behalf of the defendant.

The Master: That will be noted.

Q2. Where do you reside, Mr. Suydam? A. .45 Delamere Place, Brooklyn.

Q3. What is your occupation? A. I am Vice-president and Manager of the Foreign Department of the Hanover National Bank of the City of New York.

Q4. You are Vice-president of the bank and Manager of the Foreign Department? A. Yes.

Q5. The Hanover National Bank has its principal office and banking house at what address? A. The Hanover National Bank has its only office at 11 Nassau Street.

Q6. In the County and State of New York? A. The City of New York.

Q7. How long have you been Vice-president of that bank? A. I have been Vice-president about two years.

Q8. How long have you been connected with that bank in any capacity? A. 29 years.

Q9. How long have you been Manager of the Foreign Department of that bank? A. Approximately six years.

Q10. Do you know Mr. John E. Bouden, Jr.? A. I do.

Q11. He is President of the Whitney Central National Bank of New Orleans, is he not? A. He is.

Q12. When did you last see Mr. Bouden? A. I should say about a month ago—six weeks ago, probably.

Q13. And that was in New York City? A. New York City.

Q14. And at the office of the Hanover National Bank? A. He was at the office of the Hanover National Bank.

Q15. Is there anything which you have with you which you can obtain which will enable you to fix the exact date of the time you last saw him? A. There is nothing of a documentary nature which will fix the exact date.

Q16. It was during the month of April? A. I presume so. I did not take note of the date.

Q17. Did you see Mr. Bouden on more than one occasion? A. He was in the bank and took lunch with one of our officers.

Q18. Had you seen him during the week before that? A. I did not.

Q19. Or after that? A. I saw him going through the bank about two days after that.

Q20. With what officer of the bank was he taking luncheon at the time you mention? A. He took luncheon with the President and one of the vice-presidents.

Q21. What is the President's name, for the record, please?

A. The President is William Woodward.

Q22. And the Vice-president's name? A. D. Hayward Sperry.

Q23. Did you have any conversation with Mr. Bouden at the time you speak of? A. A conversation of a general character.

Q24. Will you please state as nearly as you can remember the substance of the conversation you had with him at that time? A. I asked him how things were coming along in New Orleans, and what was being done in foreign exchange.

By the Master:

Q25. You asked him what was being done in New Orleans and in foreign exchange? A. Yes, I asked him what was being done in foreign exchange and I asked him if there was anything new pertaining to business in that city.

By Mr. Stern:

Q26. How long a conversation did you have with him at the time? A. About two minutes.

Q27. Did he state how long he had been in New York City? A. He did not.

Q28. Or how long he intended to stay? A. He did not.

Q29. The Hanover National Bank is what is known as a correspondent bank of the Whitney Central National Bank, is it not? A. The Whitney Central National Bank is one of the depositors of the Hanover National Bank, the same as approximately 4,000 other banks in the United States.

Q30. I understand that, but you know what a correspondent bank is, do you not, Mr. Suydam? A. I do.

Q31. Is not the Hanover National Bank a correspondent bank of the Whitney Central National Bank? A. The Whitney Central National Bank is a depositor of the Hanover National Bank.

Q32. What is the definition of the term "correspondent bank", as the expression is used in banking circles, if you know, Mr. Suydam? A. I think that is a legal question; I think it is for Counsel to define that expression.

Q33. Do you know how to define that expression? A. Yes.

Q34. Will you please do so? A. A correspondent is one who has transactions to and from the city in which his correspondent is located, of a nature which is somewhat reciprocal.

Q25. The fact that one bank is acting as a correspondent

bank of another, is a matter which is advertised in banking publications, is it not? A. They are called correspondents of the bank.

Q36. How long has the Hanover National Bank been acting as correspondent of the Whitney Central National Bank, as far as you know? A. It was one of our accounts when I came in the bank 29 years ago.

Q37. Now you say that the Whitney Central National Bank has a deposit account with the Hanover National Bank; that is correct, it is not? A. I do.

Q38. And it had such a deposit account on the 13th of April, 1921, had it not? A. It did.

Q39. And so far as you know, had had such an account for 20 years, did you say, at least? A. More than that.

Q40. At least that? A. At least 20 years.

Q41. Do you know whether or not there was a balance to the credit of the Whitney Central National Bank in that account with the Hanover National Bank on April 13th, 1921? A. I do not know the amount of the balance, but I presume they did have one on that date.

Q42. A balance to the credit of the Whitney Central National Bank? A. Yes.

Q43. What, if anything, will enable you to determine that fact, what record or book of the bank? A. We have the ledger of that date.

Q44. Have you with you either the ledger or a transcript from the ledger showing that account on that date? A. I have a transcript of the ledger, but it will not show that date.

Mr. Conboy: In order to shorten your inquiry, we will make a concession on the record, so far as we can make a concession, to the effect that there was a balance to the credit of the Whitney Central National Bank on the date you refer to.

Q45. Does the Hanover National Bank render periodical statements of the amount to the Whitney Central National Bank? A. Yes, at least once a month.

Q46. How long has that been going on? A. For years.

Q47. What is the date, if you know, of the last monthly statement of account? A. The last day of April.

Q48. 1921? A. 1921.

Q49. Has it been the course of business between the two banks mentioned for the Whitney Central National Bank to draw drafts or checks upon its account with the Hanover Na-

tional Bank? A. The Whitney Central National Bank has since the date of the opening of its account drawn checks on us, which were debited on its deposit account.

Q50. And those checks are presented for payment to the Hanover National Bank now through the Clearing House in the usual course of business? A. They are presented to the Hanover National Bank through the Clearing House or for certification or for cash at the teller's window.

Q51. Has it been part of the course of business between the two banks for the Hanover National Bank to pay drafts drawn by third parties on the Whitney Central National Bank? A. We have never paid drafts drawn on the Whitney Central National Bank, to my knowledge.

Q52. Have you seen any letters of credit issued by the Whitney Central National Bank wherein by their terms, drafts drawn under those letters of credit are made payable at the Hanover National Bank? A. I have seen letters of credit which originated in New Orleans which made it optional to be paid at the Hanover National Bank.

53. Has that been part of the course of business between the two banks to make such drafts as you say, optional, payable at the Hanover National Bank? A. The document mentioned is a letter of credit, the terms of which state that the documents and papers should be presented at New Orleans, and which are made payable at the Hanover National Bank.

Q54. Do you recall drafts and documents attached, being presented to you as an officer of the Hanover National Bank by the firm of Ham & Seymour in the City of New York? A. I recall documents, but not by Ham & Seymour.

Q55. Or the Bank of America? A. I recall documents being drawn by the Bank of America against these letters of credit.

Mr. Conboy: You are referring now to documents which are the subject of these suits which you started by summons?

The Witness: Exactly.

Q56. Exactly. Now you say you have for several years been connected with the foreign exchange department of the Hanover National Bank and for two years its Manager? A. I said for several years Manager.

The Master: He said he had been its Manager for six years.

Q57. You have been Manager for six years; during that time

have you ever had any transactions in foreign exchange with the Whitney Central National Bank of New Orleans? A. We have had transactions with the Whitney Central National Bank of New Orleans in foreign exchange.

Q58. Are those transactions recorded in any book or record of the Hanover National Bank, and if so, what book? A. Those transactions are part of the record of the Foreign Department of the Hanover National Bank. They are also contained in the letters of the Hanover National Bank.

Q59. The letters did you say? A. Yes, the letters on file.

Q60. Letters addressed to whom? A. To the Hanover National Bank by the Whitney Central National Bank.

Q61. These letters to the Foreign Department, how would you describe them? A. The Foreign Department being either a buyer or seller of such exchange from the Whitney Central National Bank, it was either a seller or buyer, according to the transaction involved. They became part of our purchases or sales of that bank's exchange on either London, Paris, or some other country of the world.

Q62. Yes, but you have not described the records; what I want to know is how you describe these records? A. The records are what is known as the Journal of the Foreign Department and the Foreign Ledger.

Q63. Have you got the ledger and journal of the Foreign Department with you, showing transactions in Foreign Exchange of the character you have described during the year 1921? A. I have not.

Q64. Nor have you a transcript from them, I mean from that account? A. I have no transcript.

Q65. Have you got such records of Foreign Exchange transactions or either of them for the year 1920? A. We have up as far as July.

Q66. You have those with you? A. No, I have nothing with me of that character.

Q67. You spoke of your Foreign Exchange Journal and Ledger; is that correct, Mr. Suydam? A. Foreign Exchange Journal and Foreign Ledger.

Q68. Will you describe generally the character of the transactions that are recorded in the credit column of this account? I am referring, of course, to that particular account with the Whitney Central National Bank. A. We have a Foreign Exchange journal which takes the place of a credit and debit item for all transactions that we buy or sell during that day. For

instance, if the Whitney Central National Bank should sell to us a twenty thousand pound sterling draft on London, drawn on the London City Midland Bank at London, we would receive it on its arrival here and through the medium here of the Foreign journal, credit the proceeds to the account of the Whitney Central National Bank, at the same time debiting the same to the London correspondent to whom we sent it for our credit.

Q69. Now, in this journal, is there any separate account entitled "Whitney Central National Bank", such as you would have in the ledger, for example? A. There is no separate account. There is merely an entry showing that the proceeds are to be credited to the Whitney Central National Bank account.

Q70. Are those transactions posted in the ledger of the Foreign Exchange Department? A. Those transactions are posted from the journal to the foreign ledger, but in the foreign ledger it only shows who the drawer of the bill is, and on whom it is drawn, together with the amount and rate at which it was purchased.

Q71. Now, that is in the case of a sale by the Whitney Central National Bank? A. That is in the case of a sale.

Q72. And as I understand the transaction itself—please correct me if I am wrong—it is that the Whitney Central National Bank offers to the Hanover National Bank for sale a draft drawn by the Whitney Central National Bank on a bank in London; is that correct? A. The Whitney Central National Bank wires the Hanover National Bank requesting them to make a bid on their draft issued by themselves drawn on a London bank for an amount.

Q73. And in the event of the acceptance of the bid made by the Hanover for that draft, the draft itself is then forwarded through the mails by the Whitney Central National Bank to the Hanover National Bank, and is then sold by the Hanover National Bank to others? A. In the case of the acceptance of the Hanover National Bank's bid by the Whitney Central National Bank, they immediately wire the Hanover National Bank accepting such bids and forwarding a draft drawn on a London or some other bank in another country to the order of the Hanover National Bank; the Hanover National Bank endorses the bill and sends it to its foreign correspondent for the credit of the Hanover National Bank.

Q74. And is that the only form in which the purchase of

exchange takes place? A. That is the only form in which the Whitney Central National Bank offer the Hanover National Bank their own exchange on other countries.

Q75. Does the Hanover National Bank ever sell these drafts of the Whitney Central National Bank to others? A. The Hanover National Bank has never, as long as I can remember, received or sold to others for the account of the Whitney Central National Bank any exchange on any country of the world.

Q76. It has confined its transactions to these two? A. To the two, either as buyer or seller.

The Master: Do you want to go through the process when the Hanover National Bank is selling and the other is buying?

Mr. Stern: Yes.

Q77. Does the Hanover National Bank sell exchange to the Whitney Central National Bank? A. Occasionally the Whitney Central National Bank will wire to the Hanover National Bank inquiring at what rate we will sell a certain amount of exchange either on London, Paris or some other country. The Hanover National Bank will immediately wire to the Whitney Central National Bank offering them the amount of exchange required at a certain rate, which rate, if satisfactory to the Whitney Central National Bank they will accept and request us to remit or cable the amount involved to their foreign correspondent for their credit and charge their account for the equivalent of such orders, being arranged according to their desire and under their authority.

Q78. You speak of these transactions as being occasional; now, the transactions involving the purchase of the exchange, are those transactions quite frequent? A. They are infrequent. They are usually a seller on account of their position as the handler of a large amount of cotton.

Q79. You misunderstood my question. The transactions wherein the Hanover National is the Seller, you said were infrequent, and occasional; I am asking you now whether the transactions wherein the Whitney Central National Bank is the seller and the Hanover National Bank is the buyer, have not been frequent and active? A. At certain times of the year, during the cotton season, it is more frequent.

Q80. Just give us the months of the year that these accounts are most active? A. July—from August to January or February.

By Mr. Conboy:

Q81. Is that the period when cotton is going abroad? A. It is.

By Mr. Stern:

Q82. Will you describe what is known as a bank acceptance?

A. A bank acceptance is a document that is issued by a bank or commercial house on a bank in some city of the United States drawn usually at sixty or ninety days.

Q83. It is a negotiable instrument? A. It is a negotiable instrument.

Q84. In the form of a draft? A. It is a form of draft.

Q85. In the form of a draft? A. A time draft.

By Mr. Conboy:

Q86. Have you finished your answer? A. No, he stopped me. In the form of a time draft, which is presented on the bank on which it is drawn. Said bank accepts the draft, and he takes from it any documents that are attached, and returns it to the presenting bank, who negotiates it or keeps it, according to its requirements.

Q87. The acceptance is an accepted draft, is it not? A. An accepted draft.

By Mr. Stern:

Q88. Now, it is part of the business, is it not, which the Hanover National Bank has been doing for the Whitney Central National Bank to sell acceptances of the Whitney Central National Bank? A. Not to my knowledge.

Q89. What officer of the Hanover National Bank would have precise information on that point? A. One of our assistant cashiers, Mr. Gardner.

Q90. What is his full name, please, or initials? A. James P.

Q91. In the event of any such sale of acceptances of the Whitney Central National Bank by the Hanover National Bank, in what records or books of the Hanover National Bank would such transactions be recorded? A. That would be recorded on the books or ledgers of the Hanover National Bank, placing the proceeds to the credit of the Whitney Central National Bank.

Q92. You spoke of the Whitney Central National Bank having an account with the Hanover National Bank; that was a general account? A. The Whitney Central National Bank has a regular deposit account.

By the Master:

Q93. It is only one account then? A. One account.

By Mr. Stern:

Q94. That is the account in which transactions such as you have mentioned are credited to that account? A. It is a credit and debit account.

Q95. And if any such sales have been made by the Hanover National Bank or acceptances by the Whitney Central National Bank for the latter's account, they would be entered in that account? A. They would be entered in that account.

Q96. Do you know whether or not the Hanover National Bank has been purchasing bank acceptances for others for the account of the Whitney Central National Bank? A. Not to my knowledge.

Q97. And the same officer whose name you have mentioned would know definitely about those transactions? A. The same officer.

Q98. Do you know whether or not the Whitney bank has been selling through the Hanover Bank commercial paper of its customers other than bank acceptances? A. Not to my knowledge.

Q99. What officer would be familiar with that account? A. The same officer whose name I have mentioned.

Q100. Do you know whether or not the Whitney bank has on deposit for safe keeping or otherwise, any stocks, bonds or valuable securities with the Hanover National Bank? A. The Whitney Central National Bank of New Orleans has on deposit, known as special deposit of securities, certain securities in the name of one of their clients, which we are holding in the Hanover National Bank subject to the Whitney Central National Bank's instructions.

Q101. You say those securities are subject to the order of a client of the Whitney Central National Bank? A. They are stock subject to the order of the client of the Whitney Central National Bank.

Q102. Is that the only instance where you have any property on special deposit? A. That is the only instance to the best of my knowledge.

Q103. How long has your bank held those securities in your bank, approximately? A. The date does not appear on the record. I can give you the security.

Q104. I do not want the security.

By Mr. Conboy:

Q105. Can you give the approximate date, Mr. Suydam? A. It does not appear on this card.

Q106. To the best of your recollection, how long has it been? A. I do not handle this end of the business.

By Mr. Stern:

Q107. These securities were on deposit with the Hanover National Bank on April 13th, 1921, were they not? A. The date was February 18th, 1918, and they were received from Emanuel Parker & Co. of New York by hand; they were presented by hand for the account of the Whitney Central National Bank. There have been several substitutions after that date by order of the Whitney Central National Bank.

Q108. How were those substitutions of collateral made, by hand? A. By hand.

Q109. By Emanuel Parker & Company of collateral? A. We do not know whether it was collateral; the substitutions of securities were made by hand.

Q110. Do you know how those securities came into the possession of the Hanover National Bank? A. They were forwarded to us, to the best of my belief and knowledge, by the Whitney Central National Bank of New Orleans, to be held in special deposit subject to their further instructions.

Q111. When you say "forwarded" you mean either by mail or express? A. Either by mail or express.

Q112. You are not certain that is the fact, however? A. I can give you that data from the record of the book. I will make a memorandum to see whether it was forwarded by mail or express.

Q113. Has the Hanover National Bank been in the habit of receiving coupons from the Whitney Central National Bank for collection? A. I presume we received the usual remittance which consist of coupons and checks drawn on other people. I have no special one that I can refer to in which we received coupons, but when they are received, they are put to the credit of the Whitney Central National Bank, the same as cash.

Q114. Do you know of any instances wherein the Hanover National Bank has accepted drafts accompanied by documents drawn under letters of credits issued by the Whitney Central National Bank? A. Accepted drafts? May I inquire do you mean the Hanover has put their name on such drafts?

Q115. Yes; in any form? A. The Hanover National Bank has never in its existence accepted a draft for the Whitney Central National Bank, that is, by putting its name on the face of the draft.

Q116. Has the Hanover National Bank ever paid any drafts drawn on the Whitney Central National Bank by others under letters of credit on the Whitney Central National Bank? A. I will look through my records to see if I can get an earmark for any one transaction. The drafts in almost every instance that have been presented, have been drafts drawn on the Whitney Central National Bank payable at the Hanover National Bank or care of the Hanover National Bank; that is, drafts that I have in front of me, are care of the Hanover National Bank of New York, and another one here says "Payable at the Hanover National Bank."

Q117. That is the acceptance which reads that way? A. That is not an acceptance; it is a draft at sight.

By the Master:

Q118. That is in the language of the draft? A. That is in the language of the draft. It says here "To the Whitney Central National Bank, New Orleans, payable at the Hanover National Bank"; in another case it says "To the Whitney Central National Bank, care of Hanover and/or Whitney Central National Bank".

By Mr. Monroe:

Q119. Those are the drafts which were not paid? A. Those are the drafts which were not paid, which are the subject of this controversy.

By Mr. Stern:

Q120. Outside of those particular drafts which were not paid, do you know whether or not drafts made payable in similar form at the Hanover National Bank have not been frequently presented at the Hanover National Bank and paid? A. We have only had a very few transactions of this character with the Whitney Central National Bank of New Orleans.

Q121. But you have had some, to your knowledge? A. The only one that I can remember is one which we opened in New York. We were the principals.

Q122. Will you explain what you mean by "You opened"? A. We had instructions from the Whitney Central National Bank to open a credit in favor of a bank in New York, paying

them a certain amount of money on presentation of documents specified in their instructions, which documents we were to hold subject to the Whitney Central National Bank's account, charging their deposit account with the equivalent; that is the usual procedure which is adopted by a great many banks throughout the United States.

Q123. You said in this particular transaction you originally had reference to, that your bank was the principal? A. We were the principal.

Q124. But, as a matter of fact, you were acting in the matter under instructions? A. We were acting under instructions.

Q125. From the Whitney Central National Bank? A. From the Whitney Central National Bank.

Q126. And for its account? A. To the debit of their account.

Q127. Would you be in a position to know of all of the transactions of the character which I have mentioned, or would some other officer of the bank be in a better position to testify as to that? A. They were all passed through my hands.

Q128. That is to say,—let me repeat and get this clear: Drafts of other parties drawn on the Whitney Central National Bank under letters of credit, issued by that bank and accepted by the Whitney Central National Bank at the Hanover National Bank? A. Now you have specified something else. That becomes an obligation of the Whitney Central National Bank. Those are what we call acceptances of the Whitney Central National Bank.

Q129. Tell us about that? A. These drafts are drawn by New Orleans, by sundry parties in whose favor letters of credit are issued by the Whitney Central National Bank. The Whitney Central National Bank has a draft presented at their counter in New Orleans. They accept the draft payable at the Hanover, and they immediately become an acceptance of the Whitney, and that bank's obligations. Being domiciled at the Hanover, it authorizes the Hanover on presentation to charge them to their account.

Q130. And those drafts are presented then at the Hanover National Bank for payment? A. Either there or through the Clearing House or for certification.

Q131. And are paid by the Hanover National Bank? A. Under the instructions of the Whitney Central National Bank, if the instructions are in hand.

Q132. Now, those transactions are frequent, are they not? A. Quite frequent, I should say.

By Mr. Conboy:

Q133. Does the acceptance itself indicate that it is payable at the Hanover National Bank or is that subject to special instruction or letter? A. It is on the face of the blank, payable at the Hanover; that is the form of the acceptance

By Mr. Stern:

Q134. Transactions of that nature were frequent during the year 1921? A. Yes, I have several advices right here.

Q135. Now, here for instance is an advice to the Hanover National Bank under date of January 3rd.

Q136. Is this a typical form of advice received in such transactions? A. That is the usual form we received.

Q137. I refer to this paper which I have in my hand? A. Occasionally we get a typewritten letter, but the usual form is like what you have there.

Mr. Stern: I will now read, with your Honor's permission, this in the record:

"Whitney Central National Bank of New Orleans,
Foreign Exchange Department,

New Orleans, Jan. 3, 1921.

"Hanover National Bank,
New York.

Dear Sirs:

We beg to advise that draft, as per memorandum below, drawn on the Whitney Central National Bank, New Orleans, and accepted, payable at the Hanover National Bank, New York, will be presented to you for payment. Kindly honor same upon presentation on or after the dates noted below to the debit of our account."

Then follows the memorandum of the draft. It is signed Whitney Central National Bank, Foreign Exchange Department.

Mr. Stern: I offer this paper as read, without marking it in evidence.

Q138. Now, these drafts which you have last referred to, which are typical forms of advice concerning which I have questioned you and read into the record, are those what are called clean drafts. A. Those are time bills, bankers' acceptance payable at the bank here.

Q139. With no papers or documents attached? A. No documents attached.

Q140. I want to ask you whether you do not also pay drafts drawn by other parties on the Whitney Central National Bank with documents attached? A. We have had several letters of credit opened by the Whitney Central National Bank, which letters of credit stipulated that they were payable in New Orleans or payable at the Hanover National Bank. The documents could be presented to New Orleans or payable at the Hanover.

Q141. Those letters of credit were issued by the Whitney Central National Bank? A. They were issued by the Whitney Central National Bank.

Q142. You say you have several instances of such letters of credit? A. We had a few instances presented.

Q143. Can you enumerate all the instances under which drafts drawn under such letters of credit were presented to you? A. There are about four or five cases.

Q144. In such cases, how is the Hanover National Bank first advised of the transaction? A. We receive instructions from the Whitney Central National Bank that the drafts will be presented.

Q145. These instructions advise as to the terms of the letter of credit or do they enclose a copy of a letter of credit? A. Some cases they do and in some cases they do not.

Q146. Do not which? A. Enclose copy of letter.

Q147. In cases where they do not enclose copy of a letter of credit, do they advise of the substance of the terms of the letter? A. They advise the particulars of the letter of credit, but it is customary for the presenting bank to always accept the original letter of credit which guides in the payment.

Q148. I would like to get all the instructions and correspondence in regard to all such transactions.

Mr. Conboy: May I ask a preliminary question?

The Witness: The original letters in relation to these credits which were opened in April 22nd are in New Jersey. We only have in our bank the letters from July 2nd, 1920 to date; the balance was taken over to New Jersey as they are every year. That is, we keep them for six months and the previous six months' letters are filed away in New Jersey, so I have not the original instructions but I have the particulars which the letter contains.

Mr. Conboy: These papers appear to be instructions relative to matters that are in controversy, which give rise to these three actions, and the request of counsel to examine these is to enable him to examine correspondence between the Whitney Central National Bank and Hanover National Bank regarding instructions given by the witness.

The Master: Have you not instructions about matters other than these?

Mr. Conboy: If we had anything else that is typical I have not the slightest objection to their going in, but I do not think in the guise of this kind of an examination he should be permitted to examine instructions sent to the Hanover National Bank, in this examination.

Mr. Stern: The issue, may it please your Honor, is whether or not these people are and have been doing business in the State of New York. Now, the fact that one of the instances in which they have been doing business happens to be an instance which is in controversy does not affect the situation at all. In fact, the Supreme Court in a number of those cases held that was a very relevant and important fact, and in one case a decisive factor as to whether they were doing business.

The Master: Inasmuch as the witness has said that there were five of these instances and there can be but three to be concerned in these suits, I cannot see why everything cannot be obtained by going into the other two. Let us get the general matters first. Let us get those matters about which there can be no dispute then if you want to raise the question how far you can go with this particular transaction; that is another thing. Let us keep that by itself for the present.

Mr. Stern: It might be desirable to have the witness state without saying what the contents of the papers are, what documents he has here at the present time so we will have on the record a statement that the witness has got certain documents.

The Master: I shall not make any ruling or give instructions to the witness about anything connected with the main controversy until we have eliminated all the instances that have not anything to do with it. He is looking for the two now.

By Mr. Stern:

Q149. What are you looking for now, Mr. Suydam? A. I am looking for the two cases which I mentioned which do not concern this case.

Q150. Do you know the names in those cases? A. I am looking for them. I telephoned the bank for the names. This is a memorandum of exchange that we purchased—these were drafts which bore other endorsements. They were drafts on continental cities and did not concern their own draft on London, that which they sold to us with their endorsement; that is all we had since that date.

By Mr. Monroe:

Q151. The sale was made in the manner you indicated in your testimony? A. Yes.

By Mr. Stern:

Q152. Did you say since November, 1920? A. Yes, do you see the date on there? November 22nd, 1920; November 22nd, 1920 and June 5th, 1920. There have not been any since. I have had men looking through this morning.

Q153. The Hanover Bank purchased from the Whitney Central National Bank bills of exchange drawn— A. These were drafts with endorsements on.

By the Master:

Q154. Drafts to the order of the Whitney Central National Bank? A. Endorsed to us.

By Mr. Stern:

Q155. Who offered you these drafts for sale? A. The Whitney Central National Bank.

Q156. Were these sold by the Hanover National Bank here? A. These were sent by the Hanover National Bank to its correspondent in that city for their own credit after purchasing the same from the Whitney Central National Bank.

By the Master:

Q157. "That city" means the city of the drawee? A. On the drawee.

By Mr. Stern:

Q158. On whom were these drafts drawn? A. They were drawn on the Credit Lyonnais, the other in Amsterdam and the other in Cristobal, Panama.

Q159. Do you know to whose order these drafts were drawn? A. I do not remember to whose order they were drawn. I probably can secure photograph, as we photograph every draft we buy.

Q160. What I am getting at is were they payable to the order of a third person other than the Whitney Central National Bank and endorsed by that third person? A. I presume they were.

Q161. That is the usual case in such drafts? A. That is the usual case in such drafts.

Q162. And then endorsed by the Whitney Central National Bank? A. Endorsed by the Whitney Central National Bank to the Hanover National Bank.

Q163. And sold to the Hanover by the Whitney? A. By the Whitney Central National Bank.

Q164. And delivered here in New York? A. Delivered here in New York.

Q165. And the proceeds placed by the Hanover to the credit of the Whitney Central National Bank? A. To the deposit account of the Whitney Central National Bank.

By Mr. Monroe:

Q166. You said "delivered," you mean mailed? A. That means mailed, yes.

Q167. Are you certain that these three instances, memorandum of which I am going to read into the record, are the only instances of transactions of similar character during the year 1920? A. I would not say during the whole year of 1920, I would say to the best of my belief and knowledge those were the only instances shown by our books where the Whitney Central National Bank has sold us exchange since that date.

Q168. Since what date? A. June 5, 1920.

Q169. And is there any book or records of the Hanover National Bank which will put you in a position to testify positively as to this? A. My men have been digging that out from the journal and that is the information they gave me.

By the Master:

Q170. Back of that date, they might find some more? A. They probably will find some more.

Mr. Stern: I would like to read this memorandum into the record:

37246x Konenkleske-Hollendsche Lloyd-Amsterdam

11/22/20 Glds 210,256.41 at 3008 \$63,245.14
 37247 Credit Lyonnais Paris
 11/22/20 Fcs 130,000.00 at 1675 \$7,761.19
 34501 American Banking Corp-Cristobal
 6/5/20 \$7.31 less 25c \$7.06

Q171. Now, these three instances do not include the purchase by the Hanover National Bank of drafts drawn on the Whitney Central National Bank and accepted by it? A. It is a different class of exchange.

Q172. Entirely? A. This is exchange purchased with the endorsement of the Whitney Central National Bank, as a transaction between a buyer and seller, a sale; whereas the other exchange mentioned is an acceptance of the Whitney Central National Bank payable under their signature at the Hanover National Bank.

Q173. Do you know of any instances where the Hanover National Bank itself issued a letter of credit to a third party or parties at the request of the Whitney Central National Bank? A. One occasion as mentioned in the previous testimony, we received instructions from the Whitney Central National Bank to issue a letter of credit in favor of a bank here, which letter of credit was issued under the signature of the Hanover National Bank, documents presented and paid for.

Q174. Here in New York? A. Here in New York, and the proceeds debited to the account of the Whitney Central National Bank.

Q175. By the Hanover National Bank? A. By the Hanover National Bank.

Q176. Are you certain that that is the only instance of that character? A. That is the only instance according to our records.

Q177. Do you know the date of that transaction? A. That is one of the five. He is getting that.

Q178. Has the Whitney Central National Bank ever rediscounted with the Hanover National Bank commercial paper of its customers? A. Not to my knowledge. Information of that character would be produced by the party mentioned in my previous testimony, Mr. Gardner.

Q179. Has the Whitney Central National Bank been in the habit of borrowing money from the Hanover National Bank? A. They have, from time to time.

Q180. Have they done so during the years 1920 and 1921? A. They have.

Q181. Do you know how recently, in 1921, the last loan was made by the Hanover National Bank to the Whitney Central National Bank? A. We have one outstanding.

Q182. Have you got the date when that loan was made? A. That loan was made December 27th, 1920. That is still outstanding.

Q183. Was that the latest loan? A. That is the last loan; that is the last one we have on our books.

Q184. The last one which is not paid, but not necessarily the last made? A. Being a demand loan, I would say yes.

Q185. Has the Whitney Central National Bank been in the habit of shipping currency to the Hanover National Bank? A. Years ago I would say they were.

Q186. Not recently? A. The Reserve facilities now prevent a great many of these shipments from long distant points to New York. The money is deposited in the local Reserve Bank and the transfer is made through the Reserve Bank to their credit. There may be that occasionally shipments would be made.

Q187. Who would know about that? A. That would come under the jurisdiction of the paying teller or his assistants, but would all show up in the record.

Q188. That would show whether it was an actual cash delivery here in New York over the counter? They show it in the same way as cash paid over the counter? A. The account shows two months.

Q189. If there are any instances in the last two months, they would appear? A. They would appear.

Q190. Has the Hanover National Bank been in the habit of receiving credit to the account of the Whitney Central National Bank for the use of any of the customers for the Whitney Central National Bank? A. I have no special case in mind, but it is the usual custom of all banks to make deposits with a New York bank for the credit of a depositor in said New York bank for the use of some party in the city where—

Q191. City of New York? A. No, for the use of some party where the principal is domiciled. For instance, the Hanover National Bank would receive a deposit from John Jones for the credit of the Whitney Central National Bank of New Orleans for the use of Tom Brown & Company in New Orleans. That is the medium of transfer.

Q192. Do you ever receive from any other bank, any other out of town banks funds for the credit of the Whitney Central National Bank on the books of your bank? A. Frequently.

Q193. With the instructions as to the New Orleans bank that the money is for the use of one of their customers? A. The credits we usually receive from out of town banks are for the credit of the Whitney Central National Bank of New Orleans without any restrictions. Any arrangements which the out of town bank would make would be made direct by them with the Whitney Central National Bank.

Q194. Then in such cases, you do receive instructions from the Whitney Central National Bank to hold that fund? A. That goes in the general deposit account. We have no special instructions. We receive from such and such a bank advices, which are melted in with the general deposit account.

Q195. Do you receive telegraphic transfers of funds from the Whitney Central National Bank for the account of the bank's New York customers? A. We receive instructions from the Whitney Central National Bank to pay certain parties here mentioned in said telegrams certain amounts from time to time.

Q196. Certain parties here, you mean in New York City? A. In New York City.

Q197. And that is a frequent transaction? A. I would say it is quite frequent.

Q198. Now, you say you have made loans to the Whitney Central National Bank; have those loans at any time been secured by a collateral security? A. Those loans are made on demand under authority of the Board of Directors and certain collateral in their hands are earmarked and set aside as collateral for said loans.

Q199. The collateral is never in the hands of the Hanover National Bank? A. It is never in the possession of the Hanover National Bank, but it is in the hands of the Directors of the Whitney Central National Bank in New Orleans.

Q200. Does this collateral consist of securities or commercial paper? A. Securities, as a rule.

Q201. Is there any arrangement between the Hanover National Bank and the Whitney Central National Bank whereby the depositors of the Whitney Central National Bank may cash checks at the Hanover? A. No arrangement except the Whitney Central National Bank could open a credit in favor of one of their clients.

Q202. In which case, their client would draw directly on the Hanover National Bank? A. In which case, their client would draw on the Whitney Central National Bank and under instructions of the Whitney Central National Bank, we would be authorized to cash it.

Q203. That is, here in New York, and the amount of the check would be charged to the credit of the Whitney Central National Bank? A. It all depends on the Whitney National Bank's instructions.

Q204. In the instance you were giving? A. I did not specify any single instance. I say there are cases when they do it.

Q205. In such cases where the customer draws his check on the Whitney Central National Bank and cashes it at the Hanover National Bank, is there any record made of that transaction? A. The letter from the Whitney Central National Bank giving such instructions, is the record.

Q206. But no charge is made on the books? A. If the instructions are to collect the item through the Federal Reserve Bank, we charge the usual Federal Reserve charge. If the instructions are to make the draft payable at the Hanover, we have authority from the Whitney Central National Bank to charge such drafts to their account.

Q207. Has the Hanover National Bank ever made loans for the account of the Whitney Central National Bank? A. We have not.

Q208. Is there any way in which you can give us an idea of the number and volume of each transaction wherein checks were cashed at the Hanover National Bank for customers of the Whitney Central National Bank? A. It would be difficult for me to secure one transaction without going through several years. They are very infrequent.

Q209. What records would disclose that, if any? A. The only records would be looking through every letter they sent us for the last twenty years.

Q210. In whose department would that branch of the business fall? A. It would be the paying teller's.

Q211. Has the Hanover National Bank ever purchased securities for the account of the Whitney Central National Bank? A. It is possible, but not to my knowledge.

Q212. Who would know about that in the Hanover National Bank? A. Mr. George E. Lewis, assistant cashier, has charge of that branch of the business.

Q213. Do you know whether or not the Whitney Central National Bank has ever sold securities through the Hanover National Bank? A. That is possible, but not to my knowledge. Mr. George E. Lewis would also have charge of that.

Q214. Are you familiar with what is called bank acceptance here in New York City? A. Somewhat familiar with it.

It is handled principally by Mr. Gardner, as answered in my previous testimony.

Q215. You state that in this transaction to which you have reference you received a letter of instructions from the Whitney Central National Bank in May, 1920, requesting you to open a credit in favor of the American Exchange National Bank? A. No, that was erased from the record.

Q216. I want to get that transaction straight; will you please state what that transaction was? A. This transaction here? As I stated before, the original instructions regarding this is not in our hands; it is in the warehouse over in New Jersey. However, under date of May 15th, 1920 we had instructions— In the first place, to give you an intelligent description of the whole transaction, I should have before me the original instructions, otherwise I am not in a position to give a complete statement. I will have to get that from Jersey.

Q217. Does not that summary give that to you? A. That summary gives it to me, but I would rather see the original instructions. I am depending on an assistant's data, and I would rather see the original. The man that made that summary took it from a letter, and I would like to see the original letter. Our records, as shown in File No. 30, instruct us to pay to the American Exchange National Bank, as per telegram of the Whitney Central National Bank of New Orleans under date of May 12, 1920, the sum of \$422,000.00 against delivery of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse, your order our account.

Q218. "Your order" means whose order? A. Hanover National Bank's.

By Mr. Conboy:

Q219. "Our account" is what? A. The Whitney Central National Bank, covering 6,000 bags of Cuban sugar sold to Bishop Perkins by George Kaiser of Milwaukee; "hold warehouse receipt for further instructions forward remaining bags to us. Advise by wire when paid. Please effect insurance warehouse our account."

By Mr. Stern:

Q220. Whose account? A. Whitney Central National Bank's. Under date of May 22nd, we received from the American Exchange National Bank warehouse receipts for 6,000 bags of sugar issued under the warehouse receipts of

the trustees of the Estate of William Baird 4 & 6 Erie Basin, Brooklyn, covering 1,942,322 pounds of Cuban sugar at 22 cents per pound, on which we paid \$128,630.84. We placed the goods in storage in the name of the Hanover National Bank, City of New York; the goods were duly insured by us.

Q221. In what company? A. The North British Mercantile Insurance Company, through Johnson & Higgins.

Q222. Of New York City? A. Of New York City. The policy is in the Hanover National Bank's name. The Hanover National Bank is mentioned in the policy. The insurance was reduced from time to time as the documents were delivered according to instructions from the Whitney Central National Bank.

Q223. May I interrupt to ask whether this whole file of papers you have in your hand pertains to this particular credit to which you have been testifying? A. Yes.

Q224. Did you ascertain the name of the warehouse company in which the goods were deposited? A. It is a matter of record in the document which I have stated in my answer.

Q225. What warehouse is that? A. I gave you the name, the Estate of William H. Baird, Erie Basin.

Q226. Where is the Erie Basin? A. South Brooklyn, Eastern District, opposite Fort Hamilton; I think it is at Governor's Island, and the documents, warehouse receipts issued by the Estate of William Baird were from time to time handed to Farr & Company of 133 Front Street.

Q227. In New York City? A. New York City.

Q228. He was the purchaser of the sugar? A. He was the broker in the case, broker in raw and refined sugar.

Q229. The concern who purchaser the sugar, you said was who? Who was the purchaser? A. Bishop Perkins. The sugar was sold by George Kaiser of Milwaukee to Bishop Perkins.

Q230. Where are they located, do you know? A. We do not know Bishop Perkins. Our instructions were to hand these receipts to Farr & Company. He is probably the representative of Perkins. Farr & Company were the ones we gave the receipts to. I have their receipts here; this is a very voluminous correspondence here.

Q231. This correspondence which you have just been examining, is that supplementary to the correspondence to which your memorandum of transaction is attached, or does it bear on certain particular phases only? Why are these two sets of papers kept apart? A. Because they are handled in dif-

ferent departments. Correspondence in File No. 30 represents the payment. The file herein mentioned represents the storage and the handling of it after it has been paid for.

Q232. The goods after having been paid for by the Hanover, remained in New York? A. Remained in New York State.

Q233. For how long a period, up to what date? A. Well, it was handed out at different intervals. It was sometime during 1920. I would have to pick out the exact dates. If you will allow the date to remain open—

Q234. Now, from time to time while this credit was outstanding, documents were handed to the Hanover National Bank together with drafts for payment, were they not? A. There was only one payment effected; that was on the 22nd day of May, 1920 we paid \$428,630.84.

Q235. I got the impression that documents were presented to you from time to time while the credit was outstanding? A. No no, there was only one presentation, but several deliveries after the goods were in hand.

Q236. After the goods were paid for? A. That is right.

Q237. Now, who passed upon these documents in the Hanover National Bank? A. One of my assistants.

Q238. In this File No. 30 I would like you to identify these different letters; the first letter under date of May 12, 1920 is a carbored copy, is it not, of a letter written by the Hanover National Bank to the American Exchange National Bank? A. It is.

The Master: This is File No. 30, marked Exhibit A.

Said Exhibit is as follows:

EXHIBIT A.

Pay to American Exchange Nat'l Bk.

A H G
ci.

By order of Whitney Central Nat'l Bk-N. Orleans, La.

Tel 577 5/12/20

For account of ———

Against—Invoice, weight certificate, negotiable warehouse receipt of responsible warehouse issued your order our account.

File No. 30

96 12-19-6

Date Paid	Quantity	Merchandise	Amount	Date	Quantity	Merchandise	Amount of Credit
5/22/20	6000 Bags	Sugar		5/12/20	6,000 bags	cuban	\$422,000.00
W/H Rec Trustees Est Mr					turbinated sugar sold		
Beard #5226					Bishop Perkins by Geo.		
W/H 4 & 6 Erie Basin Bklyn					Keiser, Milwaukee, hold		
1.948.322 lbs Cuban					warehouse receipt further	x	
Turbtrusted Sugar @ 22c					instructions forward		
			428,630.84		remaining documents		
Storage chgs to May 27					to us advise by wire		
882 tons @ 880c			705.60		when paid	x	
Labor chgs 882 tons @ 1.25			1,103.24		Please effect ins-		
Cooperage 6000 Bags @ 1c			60.		urance warehouse		
					our account.		
			430,499.68				

Commercial Credit
Approved CRK
Checked JS

12/13/20 New Orleans
letter 12/10/20
says consider
matter as closed

Not our credit

Cipher Dated May 14, 1920
From Whitney Central National Bank
New Orleans, La.

S.J E5/18/20

Refer to our telegram of 12th have your paid American Ex-
change National and received warehouse receipt for sugar
reply as soon as possible
HANOVER NATIONAL BANK.

W O A C

New York, 1920
6-11-7-H

May 12, 1920.

American Exchange National Bank,
New York.

Gentlemen:—

The Whitney-Central National Bank, New Orleans,
La. have requested us to pay you up to \$422,000.00 upon

delivery of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse issued to our order account of the Whitney-Central National Bank, New Orleans, La. covering 6000 bags cuban turbinated sugar sold Bishop Perkins by George Keiser, Milwaukee, Wisconsin.

When forwarding us drafts against the above kindly refer to Export Dept. mentioning this letter.

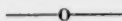
In advising you as above, we are acting merely as agents for The Whitney-Central National Bank, New Orleans, La. and cannot assume any responsibility for the continuance of their instructions, nor have we any discretion in regard to altering their advices as to the documents which are required.

Kindly note that we have been requested to effect insurance warehouse, account of The Whitney-Central National Bank,

Yours very truly,

CRK*AE.

Vice President.



WHITNEY-CENTRAL NATIONAL BANK

of New Orleans.

Capital and Surplus \$4,400,000.00

John E. Rouden, Jr., President
 Frank B. Williams, Vice-President
 Harry T. Howard, Vice-President
 J. D. O'Keefe, Vice-President
 Mauritz Fyk, Vice-President
 Chas. deB. Claiborne, Vice-President
 N. M. Whitney, Vice-President
 Eugene H. Roberts, Vice-President
 James A. Robin, Vice-President
 J. F. Flournoy, Jr., Vice-President
 John Legier, Vice-President

E. H. Keep, Cashier
 N. E. Bertel, Assistant Cashier
 S. J. McMinn, Assistant Cashier
 W. B. Allison, Assistant Cashier
 C. W. Kay, Assistant Cashier
 E. E. Leovy, Assistant Cashier
 Leeds Eustis, Assistant Cashier
 Frank V. Moise, Assistant Cashier
 John J. McGee, Assistant Cashier
 R. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 14th, 1920

Hanover National Bank,
 New York, N. Y.

Dear Sirs:—

We wired you today as follows:

“Referring to our telegram of the 12th, have you paid American Exchange National and received receipt for sugar reply as soon as possible.”

Up to a late hour this afternoon, we have not received your reply and wired you again as follows:

“Referring to our telegrams of today regarding payment to

American Exchange National
ordered refer to our telegram
of 12th await reply stop if
you hold warehouse receipt
release 1200 bags turbinated
sugar to Farr & Co., New York
wire result."

Awaiting your reply, we remain,

Yours very truly,

Royal R. Bastian,

RRB:GJB

Manager Foreign Dept.,

—o—

Cipher Dated May 14, 1920 M E 5/18/20

From Whitney Central National Bank
New Orleans La.

Referring to our telegram of today regarding payment Amer-
ican Exchange National ordered 12th await reply stop if you
hold warehouse receipt release 1200 bags turbinated sugar to
Farr and Company New York wire result.

HANOVER NATIONAL BANK,

New York, May 15, 1920

W O A C

6-11-7-H

—o—

May 14, 1920.

MEMO. FOR CABLE DEPT.

Send the following message to

Whitney Central National Bank, New Orleans, La.

collect) Telegram received American Exchange
Bank will deliver warehouse receipt when
they obtain weight certificate

Signature of head of Dept.

102-1-20-H

WHITNEY-CENTRAL NATIONAL BANK

John E. Bouden, Jr., President
 Frank B. Williams, Vice-President
 Harry T. Howard, Vice-President
 J. D. O'Keefe, Vice-President
 Mauritz Fyk, Vice-President
 Chas. deB. Claiborne, Vice-President
 N. M. Whitney, Vice-President
 Eugene H. Roberts, Vice-President
 James A. Robin, Vice-President
 J. F. Flournoy, Jr., Vice-President
 John Legler, Vice-President

of New Orleans.
 Capital and Surplus \$4,400,000.00

E. H. Keep, Cashier
 N. E. Bertel, Assistant Cashier
 S. J. McMains, Assistant Cashier
 W. B. Allison, Assistant Cashier
 C. W. Kay, Assistant Cashier
 E. E. Leary, Assistant Cashier
 Leeds Eustis, Assistant Cashier
 Frank V. Moise, Assistant Cashier
 John J. McGocoy, Assistant Cashier
 B. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 15th, 1920

E 5/18/20

Hanover National Bank,
 Foreign Exchange Dept.,
 New York, N. Y.

Dear Sirs:—

We acknowledge receipt of your letter of May 12th enclosing Letter of Credit Guarantee, to be executed by Mr. Bishop C. Perkins, and ourselves, in regard to payment we requested you to make to the American National Bank, New York, as per our wire and confirmation of May 12th.

In regard thereto beg to state that the Letter of Credit covering this transaction has been issued by us payable through your goodselfs, the amount involved to be paid out of our funds in your hands, upon presentation of the documents stipulated in our instructions. Under the circumstances we fail to see why we should be called upon to execute a Guarantee covering the transaction, as we do not request you to advance any funds, but simply charge our account with the amount of draft presented and handle the documents in accordance with our instructions.

Thanking you for your kind attention thereto, we remain,

Yours very truly,

Royal R. Bastian

Manager Foreign Dept.,

RRB:GJB

In Consideration OF THE HANOVER NATIONAL BANK OF THE CITY OF NEW YORK having opened for our account a credit No.

In favor of American Exchange Nat'l Bank for \$422,000.— in accordance with our instructions, we hereby agree to its terms and bind ourselves to place the said Hanover National Bank in funds in sufficient time to cover all drafts maturing under said credit; and we hereby give the said Hanover National Bank a specific claim and lien on all goods and the proceeds thereof for which the said Hanover National Bank may come under any engagements under said credit, on all policies of insurance on such goods, and on all bills of lading given therefor, with full power and authority to take possession and dispose of the same at their discretion, and to charge all expenses, including commissions for same, and guarantee.

We also hereby agree to assume all responsibility as to the correctness of the invoice, the quantity and quality of the goods, and that neither the said Hanover National Bank nor any of its foreign correspondents becoming party to this transaction shall incur any risk in regard to the amount of the invoice, or the price charged for the goods, or the correctness of the shipping papers, and we hereby guarantee the genuineness of the documents.

We also agree that the commission to be charged under this credit shall be per cent. for such part as shall be used.

It being hereby agreed that documents relating to merchandise imported under this credit are to be surrendered by the said Hanover National Bank against their usual Trust Receipt, or the deposit of approved securities lodged with them. All securities which have been thus lodged may be held and applied by said Hanover National Bank to secure all other indebtedness or liabilities existing or which may hereafter arise between us.

Any goods imported under this or any other credit issued by the said Hanover National Bank for our account, or their proceeds, whether the drafts against same shall have been paid or not, or whether the goods shall have been delivered to us or not, may be held by the said Hanover National Bank as a general collateral security for our account with said Hanover National Bank upon the terms and conditions herein contained.

New York, May 12. 1920

May 18, 1920.

American Exchange National Bank,
New York.

Gentlemen:—

Referring to our letter of the 12th instant regarding a payment of \$422,000.00 to be made to you against warehouse receipts, and other documents, by order of The Whitney-Central National Bank, New Orleans, La.—

We beg to advise that we have today received a letter from that bank informing us that the letter of credit covering this transaction has been issued by them, payable thru this bank, and we presume that the original of this credit is in your hands, and that you will present same with the other documents in order that we may endorse payment thereon.

Yours very truly,

CRK*AE.

Asst. Manager Foreign Department

—o—

May 18, 1920.

Whitney-Central National Bank,
New Orleans, La.

Gentlemen:—

We are in receipt of your letter of the 15th instant, in reply to ours of the 12th, regarding a credit in favor of the American Exchange National Bank, New York, for \$422,000.00 covering 6000 bags Cuban Turbinated Sugar, and beg to advise that as your telegram did not mention that you had issued your Letter of Credit for this shipment, we concluded that it was your desire that we open the credit for you.

However, we have taken note of the contents of your letter and will advise the American Exchange National Bank that this is your Letter of Credit and not ours.

We trust you have forwarded the original of this letter of credit to the American Exchange National Bank, and would be pleased if you would kindly advise us the number of same.

In this connection we beg to acknowledge receipt of your several telegrams inquiring whether warehouse receipts have been delivered to us for this merchandise, and trust you have received our reply informing you that the American

May 18, 1920.

Whitney-Central National Bank.

Exchange National Bank state that they will deliver the warehouse receipts when they obtain the weight certificates which you require before payment can be made.

Upon receipt of the warehouse receipts we will be pleased to release 1200 bags of sugar to Mess. Farr and Company, New York. Kindly advise us whether these 1200 bags are to be released against their plain receipt, or whether any payment is to be made by them for this merchandise.

Yours very truly,

X X X X X

CRK*AE.

Asst. Manager Foreign Department.

—o—

WESTERN UNION TELEGRAM

Nixt Letter x

Check Collect

Send the following message, subject to the terms on back hereof, which are hereby agreed to

New York, May 19, 1920.

Whitney Central National Bank,
New Orleans, La.

Referring credit American Exchange Bank opened your telegram twelfth are advised total is four hundred thirty thousand and four hundred ninety nine dollars sixty eight as follows Bags six thousand gross one million nine hundred sixty three thousand three hundred twenty two lbs tare fifteen thousand net one million nine hundred forty eight thousand three hundred twenty two at twenty two cents four hundred twenty eight thousand six hundred thirty eighty four storage to May twenty seventh sugar eight hundred eighty two tons at one dollar twenty five eleven hundred three dollars twenty four cooperage charges six thousand bags at one cent sixty dollars. Shall we Pay. Shal We Deliver Twelve Hundred Bags Farr Without Payment.

Hanover National Bank.

L30499.68

Bags 6000 gross 1,963,322

lbs. tare 15,000 net

1.948.322 @ 22c 428,630.80

Storage to \$127—882 tons

@ 80c Beard

storage from 4/27—705.80

labor chgs storing sugar

—o—

THE AMERICAN EXCHANGE NATIONAL BANK
No. 128 Broadway

New York, May 20, 1920.

The Hanover National Bank,
Nassau and Pine Street,
New York City.

Gentlemen:

We have your letter of the 18th instant, relative to a payment which you are to make against a Warehouse Receipt and other documents, covering 6000 bags of sugar, by order of the Whitney Central National Bank, New Orleans, La. and note that there has been a credit issued to cover this transaction. However, this document is not in our possession and we presume that our principals the First Wisconsin National Bank, Milwaukee, are holding it.

We confirm the conversation we had with your Mr. Kempp. over the telephone yesterday afternoon, in which we advised that the amount we had been instructed to receive from your goodselves against delivery of the proper documents was \$430,499.68. As your instructions are to pay us only \$422,000., we understand that you will telegraph to your New Orleans friends for authorization to pay us this additional amount.

We should thank you to advise us by telephone as soon as you have received a reply.

Very truly yours,

X X X X X

Assistant Manager,
Foreign Department.

HDP.BE

John
Frank
Harry
J. D.
Maurit
Chas. C.
S. M.
Eugene
James
J. F. F.
John L.

WESTERN UNION TELEGRAM

Day Letter x

Check Collect

Send the following message, subject to the terms
on back hereof, which are hereby agreed to

New York, May 21, 1920.

Whitney-Central National Bank,
New Orleans, La.

Telegram received American Exchange Bank presents
warehouse receipt bearing following clauses some bags torn
some slack some stained some torn and mended some received
in rain Shall we pay Have you forwarded letter credit
to American Exchange Bank and shall we demand presenta-
tion of same Merchandise already insured and being
transferred our name.

Hanover National Bank.

—o—

WESTERN UNION TELEGRAM

RECEIVED AT 195 Broadway N Y 1920 May 21 PM 5 39
A377M 33

New Orleans La 412P 21

Hanover National Bank 2018
v Foreign Dept New York N Y

Jolt your wire pay American Exchange Bank against ware-
house receipt named stop letter credit held by First Wisconsin
National, Milwaukee You paying American Exchange their
account therefore please pay without presentation of credit

Whitney Central National Bank
WBR

May 22 1920 8 26 AM

—o—

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans.

Capital and Surplus \$4,400,000.00

John E. Bouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legier, Vice-President

Cable Address: Whitbank

E. H. Keep, Cashier
N. E. Bertol, Assistant Cashier
S. J. McVadin, Assistant Cashier
W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leory, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Moise, Assistant Cashier
John J. McGoey, Assistant Cashier
R. B. Bastian, Mgr. Foreign Dept.

New Orleans, La., May 21st, 1920.

Hanover National Bank,
Foreign Dept.,
New York, N. Y.

Dear Sirs:—

We acknowledge receipt of your wire of even date reading:—

“Telegram received American Exchange Bank presents warehouse receipt bearing following clauses some bags torn some slack some stained some torn and mended some received in rain shall we pay have you forwarded letter credit to American Exchange Bank and shall be demand presentation of same merchandise already insured and being transferred our name.”

to which we replied:—

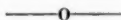
“Jolt your wire pay American Exchange Bank against warehouse receipt named stop letter credit held by First Wisconsin National Milwaukee you paying American Exchange their account therefore please pay without presentation of credit.

Awaiting your advice of the outcome, we remain,

Yours very truly,

Royal R. Bastian
Manager Foreign Dept.

RRB:GJR



WHITNEY-CENTRAL NATIONAL BANK

of New Orleans.

Capital and Surplus \$4,400,000.00

John E. Bouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legier, Vice-President

E. H. Keep, Cashier
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W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leovy, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Molse, Assistant Cashier
John J. McGow, Assistant Cashier
R. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 21st, 1920.

Hanover National Bank,
Foreign Dept.,
New York, N. Y.

Dear Sirs:—

We acknowledge receipt of your letter of May 18th, in regard to payment to be made to the American Exchange

National Bank, New York, for \$422,000, covering shipment of 6000 bags Cuban Turbinated Sugar, and in reply thereto would say that same refers to our Letter of Credit No. 4345, issued in favor of George E. Keiser, Milwaukee, Wisc.

The original of the credit is being held by the First Wisconsin National Bank, Milwaukee, by whose request we are having the payment made through your goodselves to the American Exchange National Bank, to facilitate matters for them.

Trusting the matter is now in order, and awaiting your further advice in the premises, we remain,

Yours very truly,

Royal R. Bastian
Manager Foreign Dept.,

RRB:GJB

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans.

Capital and Surplus \$4,400,000.00

John E. Boudon, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legier, Vice-President

E. H. Keep, Cashier
N. E. Bertel, Assistant Cashier
S. J. McMain, Assistant Cashier
W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leovy, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Moise, Assistant Cashier
John J. McGoy, Assistant Cashier
R. R. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 21st, 1920.

Hanover National Bank,
Foreign Dept.,
New York, N. Y.

Dear Sirs:—

We acknowledge receipt of your wire reading:—

“Referring credit American Exchange Bank opened your telegram twelfth are advised total is four hundred thirty thousand four hundred ninety nine dollars sixty eight as follows bags six thousand gross one million nine hundred sixty three thousand three hundred twenty two lbs tare fifteen thousand net one million nine hundred forty eight thousand three twenty two at twenty two cents four hundred twenty eight thousand six hundred thirty eight four storage to May twenty seventh eight hundred eighty two tons at eighty cents beard storage from April twenty seventh seven hundred five dollars eighty labor

charges storing sugar eight hundred eighty two tons at one dollar twenty five eleven hundred three dollars twenty four cooperage charges six thousand bags at one cent sixty dollars shall we pay shall we deliver twelve hundred bags Farr without payment." to which we replied:—

"Referring your telegram of the 19th inst., Credit American Exchange Bank pay draft referred to \$430,490 odd wire when paid stop deliver twelve hundred bags Farr without

WHITNEY-CENTRAL NATIONAL BANK

John E. Bouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legier, Vice-President

of New Orleans.
Capital and Surplus \$4,400,000.00

E. H. Keop, Cashier
N. E. Bertel, Assistant Cashier
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W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leory, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Molse, Assistant Cashier
John J. McGoey, Assistant Cashier
R. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 21, 1920.

H N B —2—

payment refer to our telegram of the 14th stop refer to our telegram of the 12th have you effected insurance on sugar in warehouse reply by wire."

From the above you will note that the 1200 bags we requested you to release to Messrs Farr & Co., New York, are to be released to him against receipt.

Thanking you for your kind attention to the above matter and awaiting your advice of the outcome, we remain,

Yours very truly,

RRB:GJB

Royal R. Bastian
Manager Foreign Dept.

—o—

WESTERN UNION TELEGRAM

Telegram x

Check Collect

Send the following message, subject to the terms on back hereof, which are hereby agreed to

New York, May 22, 1920.

Whitney-Central National Bank,
New Orleans, La.

Have paid American Exchange four hundred thirty thousand
odd against warehouse receipt.

Copy

Hanover National Bank,

May 22, 1920.

Whitney-Central National Bank,
New Orleans, La.

Referring to the credit opened by you in favor of the
American Exchange National Bank, as per your telegram of
the 12th instant, we beg to advise that we have today paid,
as per inclosed invoice and weight returns \$430,499.68,
which amount we have charged your account.

In accordance with your instructions we are having
the insurance transferred from the name of the First Wis-
consin National Bank, Milwaukee, Wisconsin, to our name.
as this insurance is only issued for \$406,000.00 we have taken
out an additional insurance for \$24,000.00, upon which the
premium will have to be paid.

In accordance with your further instructions, we are
releasing 1200 bags of this sugar to Messrs. Farr & Co.
against their receipt which we will forward you in due
course.

We will hold the warehouse receipt for the balance
of this merchandise, awaiting your further instructions.

We will be pleased to have you advise us what

May 22, 1920.

Whitney-Central National Bank

commission you think we are entitled to, for handling this
transaction.

Yours very truly,

X X X X X

Asst. Manager Foreign Department.

CRK*AE.

May 22, 1920.

Trustees of the Estate of William Beard,
21 State Street,
New York City.

Gentlemen:—

Referring to your Warehouse Receipt No. 5226 in our name covering 6000 bags of sugar, in Erie Basin Stores No. 4 and 6,—

We would be pleased if you would kindly deliver 1200 bags to Messrs. Farr & Company, New York.

Thanking you, we remain,

Yours very truly,

X X X X X

CRK*AE.

Asst. Manager Foreign Department.

—o—

Cipher Dated May 20, 1920

Mr S J

From Whitney Central National Bank

New Orleans, La.

Refer to your telegram of 19th credit American Exchange Bank pay draft referred to \$430,490 odd wire when paid stop deliver twelve hundred bags Farr without payment Refer to our telegram of 14th stop refer to our telegram of 12th have you effected insurance on sugar in warehouse reply by wire
HANOVER NATIONAL BANK,

New York, May 20, 1920

W O A C

6-11-7-H

—o—

May 29th, 1920.

Mauritz Pyk, Esq., Vice-President,
Whitney-Central National Bank,
New Orleans, La.

Dear Sir:

In accordance with your letter of May 27th we have released to Messrs. Farr & Company, 200 bags of Sugar without payment, against warehouse receipt No. 5226 of the Trustees of the Estate of William Beard.

Yours very truly,

X X X X X

SES

Asst. Manager Foreign Department

Mr. Conboy: I object to the letter itself being received in evidence on the ground that it is incompetent, as well as immaterial and irrelevant, and I direct your Honor's attention particularly to the statement made in one of the paragraphs in the letter as to the capacity that the Hanover Bank assumes to act in the premises. That is a letter written by the Hanover National Bank to the American Exchange National Bank; it is not a letter written by the Whitney Central National Bank, but assumes to be a letter written by the Hanover Bank, and therefore is not binding on the defendant.

Mr. Stern: You do not object on the ground that I do not produce the original letter?

Mr. Conboy: No, I do not object on that ground.

Mr. Stern: Nor do you object to the signature not being identified?

Mr. Conboy: No, I do not object on that ground.

The Master: It is competent for what is is worth. The probative value is another thing. It is competent enough.

Mr. Conboy: I except to your Honor's ruling.

Mr. Stern: What I propose to do is to go through each letter, identify what it was; examine the witness as to the signatures, and so forth.

Mr. Conboy: There is no reason for your doing that and spending any time on that. Suppose you offer it in evidence, and if I have any objection after looking through it, and his Honor then will do what he deems proper regarding the reception of it, then we will have all five in.

Mr. Stern: It is understood that I am not to be met with any technical objection as to the fact that I have not sufficiently identified what each letter is, that is, its authenticity.

The Master: When it comes in, one certainly will have to be identified so far as I am concerned, it being merely a carbon copy and the signature of the vice president is not on the carbon copy. I suppose it came from the Hanover National Bank and those are things, of course, that will have to be indicated. You need not bother

about putting in the headings. I just wanted to know where it emanated from and where it went to.

Mr. Conboy: The general objection I have to the file is that it purports to consist of communications from the Hanover National Bank to the American Exchange National Bank, and therefore any statements therein contained are not binding on this defendant.

The Master: The ruling will be reserved. That is a question for argument at the close of the case.

Q239. Did you ascertain the balance to the credit of the Whitney Central National Bank on April 13th, 1921? A. At the close of business April 13th, 1921, the credit balance was \$232,509.37.

Q240. Did your assistant ascertain the latest dates as which deliveries were made under the transaction to which you just testified? Is that letter which your assistant produced in regard to the last transaction? A. That is the last letter; it is only a question about storage.

Mr. Stern: I offer in evidence the letter from Whitney Central National Bank dated December 10, 1920, addressed to the assistant manager of the Foreign Department of the Hanover National Bank. That is merely for the purpose of fixing the date.

"December 10, 1920.

Mr. Robert Neilley,
Assistant Manager,
Foreign Department,
Hanover National Bank,
New York, New York.

Dear Sir:

Answering your favor of the 6th, we beg to advise that we have been informed by Bishop C. Perkins & Co. that they will remit direct in payment of storage charges on sugar stored at Erie Basin Warehouse as soon as they receive the bill. As this seems to be the only point remaining unsettled in connection with this transaction, we authorize you to close the matter on your books.

Wishing to assure you of our high appreciation of your very courteous and efficient attention to our interests,

Yours very truly,

W. B. Allison,
Assistant Cashier."

Q241. And that transaction referred to in that letter, is this transaction in regard to the credit extended to the American Exchange National Bank to which you have previously testified? A. Yes.

Q242. Now, I hand you a letter from the Whitney Central National Bank dated January 10, 1921, addressed to the Hanover National Bank, and ask you whether that was received by the Hanover National Bank? A. That was received by the Hanover National Bank on January 13, 1921.

Q243. This letter refers to what we may call, for the purpose of this hearing, Transaction No. 5? A. Transaction No. 5, yes.

Mr. Stern: I offer that letter in evidence. I will read it into the record.

Mr. Stern (reading): On the letter head of the Whitney Central National Bank, January 10, 1921:

"Hanover National Bank,
New York, New York.

Dear Sirs:

Kindly charge our account and pay to the Anglo-Indian Produce Company, Ltd. \$990.00, and also expenses covering ocean freight, insurance and cost of consular papers. On presentation of draft on H. N. Cook in our care, we will set up shipping documents attached covering 6,000 coffee bags to Huerta Barrios, Guatemala.

Kindly forward the draft and documents to us immediately on receipt, and oblige

Yours very truly,

W. B. Allison,
Assistant Cashier."

Q244. Will you please state what, if anything, the Hanover National Bank did in regard to this transaction after receipt of the letter? A. On receipt of this letter, on January 13, 1921, we acknowledged receipt of the letter dated January 10, 1921, as per our letter of January 13, 1921 to the Whitney Central National Bank of New Orleans. On the same date we communicated with the Anglo-Indian Produce Company, Ltd. of 156 Broadway, New York.

Q245. By letter? A. By letter.

Q246. Have you a copy of that letter before you? A. I have it here.

Mr. Conboy: I desire to offer the same objection as heretofore with regard to this correspondence so far as it consists of communications with the Hanover National Bank or anyone else except the Whitney Central National Bank.

Objection overruled and exception.

"Anglo-Italian Produce Company,
156 Broadway, New York.

Gentlemen:

The Whitney Central National Bank of New Orleans have requested us to pay you \$990.00 and also expenses covering ocean freight, insurance and cost of consular papers on presentation of draft on H. N. Cook, care of the Whitney Central National Bank with full set of shipping documents attached covering 6,000 bags of coffee to Barrios, Guatemala. Insurance certificate to be dated not later than the bills of lading. When forwarding us the drafts against the above either direct or through your bank, kindly refer to export department, mentioning date of this letter. In advising you as above, we are acting merely as agents for our correspondent, and cannot assume any responsibility for the attention to their instructions, nor have we any discretion as to altering their advices as to the documents required.

Yours very truly,

Bank Vice-president."

Q247. The original of that was signed by one of the vice presidents of the Hanover National Bank? A. Yes.

Q248. Now, what was done thereafter with respect to this transaction? A. Under date of January 21, 1921, the Anglo-Indian Produce Company presented us documents mentioned in our advices covering 15 bales of jute bags, freight and insurance for a total of \$1123.28, \$990.00 of which was the amount of which the credit was open for, the balance being freight and insurance amounting to \$133.28; the 15 bales of 400 bags was equal to 6,000 pounds of coffee.

By the Master:

Q249. You mean 6,000 bags for coffee? A. It was pounds of coffee.

Q250. I thought it was the sale of bags to pack the coffee in? A. No.

Q251. It seems to me an extraordinary way— A. Excuse me. I would like to modify that. It covers 6,000 coffee bags.

Q252. That is what I thought. A. It does not show on the outside just exactly what it is; it is 6,000 coffee bags.

By Mr. Conboy:

Q253. It was a transaction of coffee bags instead of coffee? A. Yes, coffee bags, not coffee.

By Mr. Stern:

Q254. Did some officer or representative of the Hanover National Bank pass upon the document when presented? A. A representative of the Hanover National Bank passed on it.

Q255. What department of the Hanover Bank? A. The foreign department.

Q256. In New York City? A. In New York City.

Q257. It is part of the duties of such a representative to examine the documents and ascertain whether they conform to the instructions? A. It is his duty.

Q258. After such document had been presented in this case, payment was made by the Hanover National Bank? A. Payment was made by the Hanover National Bank on January 21st, 1921.

Q259. To whom? A. To the Anglo-Indian Produce Company, Ltd.

Q260. I hand you a photographic copy of a draft pro E. G. Fontes & Company of Rio Janeiro on the Whitney Central National Bank, dated March 29, 1921 for \$6,990.00; have you any record of the payment of that draft before you? A. If you will allow me to examine the document I will endeavor to produce the record. (Document handed to the witness). That is not due until July 28th, 1921.

Q261. I hand you this photographic copy that bears the acceptance, does it not, of the Whitney Central National Bank? A. That bears the acceptance of the Whitney Central National Bank.

Q262. Payable at the Hanover National Bank? A. Payable at the Hanover National Bank on July 28th, 1921.

Mr. Stern: I offer that for identification.

Marked Plaintiff's Exhibit B for identification.
Said Exhibit is as follows:

EXHIBIT B

E. G. FONTES & CO.

No. 2750 due July 28 371740

RIO DE JANEIRO, the 28th March 1921 For \$6.990,00

Ninety days after sight pay this First of Exchange (Sec-
ond and Third not paid) to the order of Banco Hollandez
da America do Sul the sum of six thousand and nine hundred
and ninety dollars. Accurately, Payable in New York.
Value of our invoice, No. 39 for 1000 bags of coffee to New
York per s/s "Korea Line," under letter of credit
opened in our favor.

To Messrs. The Whitney Central National Bank.

E. G. FONTES & Cia

New Orleans. Waye to Uuar Ponel.

The British Bank of Southern Cal. F. B. B. 8320	The Bank of America N. Y. W 93081 Collection	Banco Hollandez da Americado Sul L. R. 6439 Rio de Janeiro
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Federal Reserve Bank

IN CASE OF REPLY APPLY TO
MESSRS. WILLIAMS, RUSSELL & CO.,
312 MAGAZINE STREET
NEW ORLEANS, LA.

Endorsements on back:—

Left b—

FEDERAL RESERVE BANK

Pay to the order of
The British Bank of South America, Ltd.

.....

Value.....

Rio de Janeiro, 2nd April 1921.

BANCO HOLLANDEZ DA AMERICA DO SUL
pp Douibres

Pay to the order of Bank of America
Rio de Janeiro 7 April 1921

Pelo The British Bank of South America, Limited.

C. F. Marsh, Cerente

W. E. J., Contader

Pay to the order of
ANY BANK OR TRUST CO.
For Collection for Account of
N Y APR 26 1921
FEDERAL RESERVE BANK,
OF NEW YORK.
COUNTRY COLLECTION N Y

CREDITED TO ACCOUNT OF
Bk. of America
N. Y.
FEDERAL RESERVE BANK
OF NEW YORK
R P. M. L. Teller.

Documentary Stamps:—

(Documentary 1 dollar) (25) (5) (4)

—o—

Q263. I ask you, Mr. Suydam, whether the Hanover National Bank has not been in the habit of paying drafts similar in character to that drawn on the Whitney Central National Bank and accepted it as payable at the Hanover National Bank?

The Master: He has answered that.

Q264. The answer is yes? A. The answer is yes.

Q265. What advices do you receive and when, with respect to the date of payment of a draft? A. I mentioned that before in my previous testimony. We get advices from time to time telling which of these drafts are to be paid. In some instances they are presented at New Orleans as memos. This list shows when they advised us to cancel their previous advice.

Q266. Now, have you those ledger sheets? A. This is the ledger sheet of the Whitney Central National Bank for the month of April, 1921.

Q267. Each one of these sheets which you hand me, represents a transaction, that is, there are thirty sheets? A. For whatever the dates are.

Q268. A separate date for each day in the month? A. That is right, and that is the total for the whole month.

By Mr. Conboy:

Q269. Those sheets in the aggregate represent the total for the whole month? A. Yes, total for the whole month.

By the Master:

Q270. There are not thirty? There ought to be a little less; you mean one for each day of the month? A. Yes, it would be one for every working day in the month, that excludes Sundays.

By Mr. Stern:

Q271. And these represent a true and accurate transcript of your account with the Whitney Central National Bank for the month of April, 1921? A. Yes, that is the original. The duplicate is sent down.

By the Master:

Q272. And I suppose in greater detail than it would be found in the ledger? A. Yes sir.

Mr. Stern: I offer all this in evidence to be marked as one number.

Mr. Conboy: I do not think, if the Court please, that we need be concerned with this. If any of these tend to establish the contention they claim, that ought to be sufficient.

The Master: Let us mark those for identification, with the understanding that any one or more can be read into the record.

Mr. Stern: That is satisfactory. Of course, it is embarrassing me to be put in the position of encumbering the record with what counsel may consider unnecessary documents, but it is a part of our case really here to show the multiplicity of the transactions, the activity of the account, and it is simply for that reason that I suggested offering this in the record. I think that in itself is helpful to the Court.

The Master: It may be offered for identification. It already appears in the record that one appears for each day.

Mr. Conboy: And that on several days during the month there are more than one transaction.

Mr. Stern: On every day.

Mr. Conboy: On every day there are more than one transaction; every day of the month there is a transaction, and on almost every day there is more than one.

Mr. Stern: If the Master will take but a cursory examination of these sheets, that is all I want.

Marked Plaintiff's Exhibit C for identification.

Mr. Conboy: It is a question of quality, as I understand it, rather than bulk.

Q273. I am going to ask you to explain some of these transactions, if you will, as to which a special entry is made here. Here is an item on the sheet for the first day of April, \$3.31 tax stamps from Equitable Trust Company to cover acceptances for \$5,805.00 paid by you. Please describe the transactions that that refers to? A. I would be unable to describe the transactions unless I saw the original instructions.

Q274. You will be unable to describe in detail, but cannot you state the general nature of that transaction? A. I would only suppose what it is. I could not state the actual conditions. I would only suppose that we were instructed to pay the Equitable Trust Company \$3.31 to cover some tax stamps on some acceptances which were overlooked.

Q275. In other words, the Whitney Central National Bank's acceptance? A. That would be my supposition; I could not tell until I have the original instructions before me.

Q276. The same acceptances as of the character of Exhibit B for identification? A. Yes, a stamp like that.

By Mr. Conboy:

Q277. Stamps of the character shown on photographic copy which has been marked Exhibit B for identification? A. Yes.

Q278. Now, I show you for April 2nd, this item \$10,000.00 received from J. S. Bache & Co. for the account of Charles Godchaux—J. S. Bache & Co. are brokers in New York City, are they not? A. They are.

Q279. And that represents a payment by J. S. Bache & Co. to the Hanover National Bank, is that right, of \$10,000.00? A. That transaction represents a payment by J. S. Bache &

Co. to the credit of the deposit account of the Whitney Central National Bank on the books of the Hanover National Bank.

Q280. You note the words here are for account Charles Godchaux. A. For the account of Charles Godchaux, who is probably a customer of the Whitney Central National Bank, but that I do not know. The only party that gets the credit on our books is the Whitney Central National Bank.

Q281. You must of necessity have received instructions from J. S. Bache & Co. that that payment was made for the account of Charles Godchaux & Co., is that not true? A. It was for the credit of the Whitney Central National Bank for the account of Charles Godchaux.

Q282. Now, here is an item on the sheet for April 4th, 1921. A. It is a credit under date of April 4, 1921 which was a remittance which the Wachovai Bank & Trust Company of Winston-Salem, North Carolina remitted us for the credit of the Whitney Central National Bank of New Orleans.

Q283. What are these figures 4/1; what does that represent? A. That is a letter, dated April 1st; Winston-Salem's letter dated April 1st.

Q284. The amount was \$2,789.03? A. Yes.

Q285. On the sheet for April 5th, you have an entry of a thousand dollars. A. That is coupons sent us in Whitney Central National Bank's letter dated April 1st amounting to a thousand dollars, which was received and placed to their credit on April 5th.

By Mr. Conboy:

Q286. Those were coupons payable here? A. Those were coupons payable in New York.

By Mr. Stern:

Q287. Now I show you sheet for April 6th, there is apparently a debit reading as follows: "Paid Penn. State Federal Tax 10 shares of Gulf Oil Corporation"; what transaction does that entry represent? A. That was paid under the instructions of the Whitney Central National Bank of New Orleans. The instructions I would have to have before me to explain.

Q288. Who was the payment made to? A. Penn State.

By the Master:

Q289. The State of Pennsylvania, do you mean? I suppose it is the State of Pennsylvania tax collector? A. Yes.

By Mr. Stern:

Q290. Also to the Federal Tax Authorities? A. Penn State. I could not give you a full explanation of that unless I had the original instructions before me.

Q291. That was apparently a tax paid upon transferred securities? A. Yes.

Q292. Were the securities in possession of the Hanover National Bank? A. That I cannot tell without looking through the instructions.

Q293. There would be no occasion for you to pay taxes— A. Unless they were forwarded to us for delivery.

Q294. I wish you would look up the instructions on that. Now, on the sheet for April 7th there is a transaction here reading "Guaranty Trust Co. return signed receipt, as drawn Farmers Loan & Trust Co." A. There are two items there.

Q295. Will you please explain those items, if you can? A. Without having the original entries before me I would suppose those items went through the Clearing House and to the two Trust Companies, and were returned by those Trust Companies for some reason or other unpaid for endorsements, or maybe the checks were not signed; or there was some defect on the item.

Q296. Now, on the other side of the account on the same date, the 7th, there is an item of \$250,000.00 entered as follows: "Received from Federal Reserve Bank, New York, Order Federal Reserve Bank, Atlanta"; "Atlanta Branch New Orleans their advice of 7th"; can you explain what that transaction was? A. The Whitney Central National Bank having a credit balance in the New Orleans Branch of the Federal Reserve Bank of Atlanta instructed them to transfer to the Federal Reserve Bank in New York \$250,000.00 to the Hanover National Bank of the City of New York for the credit of the Whitney Central National Bank of New Orleans.

Q297. And the Hanover National Bank paid interest on this account? A. The Hanover National Bank pays interest on bank accounts.

Q298. On this particular account? A. It pays interest on it, yes.

By Mr. Conboy:

Q299. It pays interest on daily balances? A. On average daily balances.

By Mr. Stern:

Q300. Now, I show you on the sheet for April 11th, 1921 on the debit side, there is an item, certified check "Theo. Wille & Co.;" what does that entry refer to? A. That is evidently two checks which the Whitney Central National Bank has authorized us to pay in New York to the debit of their account. However, not having the original entry before me, I am not able to give you a definite description of the checks.

Q301. What I was seeking to ascertain was why a specific description of the transaction is entered in such a case as that, as distinguished from various other items, most of which have no description, only an amount and number; is it some special transaction? A. It is a special transaction on which we were authorized to pay the checks which the original instructions would cover under date of April 11th. The only way we can tell exactly the particulars regarding that is to get out the instructions of April 11th.

Q302. In the ordinary case of a check drawn by the Whitney Central National Bank on the Hanover National Bank, the check is simply paid if the signature is correct? A. That is right.

Q303. And therefore no entry is made on your ledger sheets except the number of the item and the amount of it? A. As a rule.

Q304. Wherever these words appear in conjunction with the item there was a transaction of some special nature, out of the ordinary course of business? A. They are considered in the banking fraternity and known as return items. Items of checks made payable to the debit of the Whitney Central National Bank only under special instructions.

Q305. In each case therefore where these words appear in conjunction with the number of the item and the amount of it, there were special instructions? A. As far as I know, from the document before me.

Q306. That is the general course of business? A. Yes.

Q307. On the same sheet on the credit side is an item of \$200,000.00 opposite to which is the following legend: "Received from U. S. Rubber Co. letter transferring to you tomorrow through Federal Reserve Bank". A. That means that the U. S. Rubber Company has deposited with the Hanover National Bank for the credit of the Whitney Central National Bank's deposit account \$200,000.00 which the Whitney Central National Bank has requested us to transfer through the Federal Reserve Bank to-morrow to the Federal Reserve Bank of some other city for their credit.

Q308. Now, on the sheet for April 12th, for example, you have an item to the credit of the Whitney Central National Bank \$50,000, opposite to which this legend appears: "Received from Mitsui & Co. order of Southern Products Co., Dallas, Texas." Am I correct in assuming that that is a deposit by Mitsui & Company to the credit of your account with the Whitney Central National Bank for the credit of the Southern Products Co.? A. Mitsui & Co. deposited with us the amount of \$50,000 on April 12th and requested us to place that to the credit of the Whitney Central National Bank of New Orleans deposit account, by order of the Southern Products Company of Dallas, Texas. We received the \$50,000, placed it to the credit of the Whitney Central National Bank deposit account and so advised them, giving them the information contained in the instructions to us.

Q309. You had not previously advised Mitsui & Company—
A. We know nothing about them.

Q310. So Mitsui & Company must have been instructed from some other source to deposit that amount in the Hanover National Bank? A. Apparently Mitsui & Company received their instructions from the Southern Products Company, of Dallas, Texas.

Q311. On April 13th your receipts for that day disclosed two credit items respectively of \$7,554 and \$16,859 (disregarding cents), which read as follows:

"Received from Banco Commerciale Italiano covering seam 100 bales cotton Stmshp Guilia Silvan, Newburger, by order of Banco Commerciale Italiano";
and the second item:

"Received from Napoli Commerciale Italia covering collection No. 493 to 485, order of Banco Commerciale Italiano, Milano",

Will you tell us, please, what transactions those entries represent? A. From the evidence before me, I would say that the Whitney Central National Bank of New Orleans forwarded such items mentioned in the statement to the Milan branch of the Banco Commerciale Italiano for collection, with instructions that after the collections had been made, they were to remit the proceeds to the Hanover National Bank of the City of New York, for the credit of the Whitney National Bank of New Orleans deposit account.

Q312. Why this reference to 100 bales of cotton on a certain steamer? A. That is merely to earmark the collection so as to enable the Whitney Central National Bank to rec-

ognize it on their books. It is a method that is pursued by every bank in the United States.

Q313. What are the words "covering seam"? A. That is probably the name of the cotton; it may be the name of the steamer; it may be the marks on the cotton. 100 bales of cotton show it went on a certain steamer and was evidently forwarded by Newburger & Co.

Q314. That represents then what? A. The proceeds of collections which the Whitney Bank has handled directly with Italy.

Q315. On April 18th you show the following items on the debit side:

"Paid V. P. Stokes, care Hotel Pennsylvania, telegram 18, \$1000."

A. The Whitney Central National Bank of New Orleans instructed us in a telegram of the 18th of April, to pay V. P. Stokes, care Hotel Pennsylvania, the sum of \$1000.

Q316. In other words, you turned over that much in cash, and debit their account and sent \$1000 to the Pennsylvania Hotel to V. P. Stokes. You had no account with V. P. Stokes? A. Never heard of him.

Q317. On the same day and also on the debit side appears an item:

"New York State Federal Tax on 2000 shares Carson, Pirie, \$20."

A. With the evidence before me, and without the usual instructions, I would understand that to be a tax on some securities.

Q318. Which were in the possession of the Hanover National Bank and for the account of— A. That I do not know until I see the original instructions. I would have to look that up.

Q319. I wish you would look that up. Has the Hanover National Bank been in the habit of making deliveries of securities for the Whitney Central National Bank? A. They do it for nearly every bank in the country.

Q320. Please confine yourself to them? A. We have done it for the Whitney Central National Bank.

Q321. And receive and deliver securities for the account of the Whitney Central National Bank? A. To the best of my knowledge we have.

Q322. And that is a periodical transaction from time to time, in the ordinary course of instructions you both receive and deliver securities? A. I should say so.

Q323. On your ledger sheet under date of March 12th, you have an item here on the debit side of \$5,000, opposite which appears the following entry:

"We credit Cohen-Schwartz for use of L. Pedron & Co., of Havre, France, order King, Brown & Co."

Can you explain that transaction? A. Cohen-Schwartz evidently paid us a certain amount of money, \$5,000, for the use of L. Pedron & Company, Havre, France, by order of King, Brown & Co. This money was paid us for the credit of the Whitney Central National Bank; without the original instructions in hand, I cannot tell you where the principals, except Havre, are located. I presume Cohen & Schwartz are in New York.

Q324. On the same date there is a credit item of \$250,000, against which the following entry appears:

"Received from Guaranty Trust in Federal reserve Fund account, Anderson, Clayton & Co."

What does that mean? A. From that item I should presume that Anderson, Clayton Co. are cotton brokers, had instructed Whitney Central National Bank to deliver check to the order of the Hanover National Bank; said check to be deposited to the account of the Whitney Central National Bank to the amount of \$250,000.

Q325. Now, under date of March 7th, there is an entry on the debit side:

"Paid by cable to Francesco Zito per letter March 3rd, \$240."

A. The Whitney Central National Bank, in letter of March 7th, instructed us to pay Francesco Zito, wherever he may be, \$240. That is known as a cable transfer to some place outside of the United States.

Q326. Why would not the Whitney Central National Bank cable that money direct to Cico? Why should it come through you? A. In all probability they had no connection at that place.

Q327. And is that matter of cable transfer a frequent and common business between the two banks? A. I would not say it is frequent. It is occasional.

Q328. Did they ever instruct you to purchase cable transfers to Europe in the open market? A. For their account?

Q329. Yes. A. No.

Q330. They instructed you to make the cable transfers? A. They instructed us to make the cable transfers to the place designated in their instructions.

Q331. You make a customary charge for that service, do you not? A. It depends on whether we are able or not to transfer it ourselves, or whether we have to put it through a bank which has a branch there.

Q332. Where you have not a representative in the foreign locality yourself, and are required to put it through another bank, as you say, you purchase a cable transfer from the other bank, do you not? A. We purchase a cable transfer in the name of the Hanover National Bank.

Q333. And that is a matter of frequent occurrence? A. Occasional.

Q334. Under date of March 14th, there is an item of \$59,049.88, opposite which is the following entry:

"3.11 delivered J. S. Bache & Co. 60,000 Vict."

What does that entry represent? A. From the entry in the account, and without the instructions before me, it appears that we received instructions in Whitney Central National Bank's letter of March 11th, delivered to J. S. Bache & Co., 60,000 Victory bonds, and received \$59,049.88, which amount was received and placed to the credit of their deposit account.

Q335. In other words, the Whitney Central National Bank had \$60,000 of Victory bonds lodged with the Hanover National Bank? A. I would not say they were lodged. They were sent up in some method or other to be delivered.

Q336. What does "7 Co." represent? A. The "7 Co." in that entry means & Co. Instead of 7 Co., it should be & Co. It is a typographical error.

Q337. At any rate that entry shows that you delivered \$60,000 bonds to the brokers, J. S. Bache & Co., and received a check for \$59,049.88? A. Yes.

Q338. Something less than the face amount of the bonds? A. The value of the bonds.

Q339. Under date of March 19th there is an item on the credit side, \$1000 paid Mrs. F. M. Montague, order of Lloyd's Bank, London. Will you state what that transaction was? A. The New York representative of the Lloyd Bank deposited with the Hanover National Bank \$1000 for the credit of the deposit account of the Whitney Central National Bank of New Orleans, for use of Mrs. F. M. Montague, wherever she is domiciled in New Orleans.

Q340. In a number of instances, without describing them specifically, the Whitney Central National Bank would instruct you to make payment to parties here in New York, and charge their account with the amount of the same, where the

payments were for the account of their New Orleans customers? A. If you will point out a special case, I can tell you; I cannot answer that question otherwise. I will say it is the custom among banks to instruct their New York friends to charge their account and pay certain people in this city, or other cities, certain amounts of money by order of somebody in New Orleans.

Q341. It is part of the custom to do that for the benefit of the customers of the local bank? A. I am unaware of whose benefit it is, but it is what is known as a telegraphic or mail transfer.

Q342. But do you not know that very frequently, in those cases, the payment is not for the account of the bank itself, but is for the account of some one other than the bank at whose request the payment is being made. A. I would call it a regular transfer of exchange from one city to the other, the same way as a customer or client of the Hanover National Bank would come in and purchase from us a mail transfer or a telegraphic transfer on London. We would handle it in the same way as the Whitney Central National Bank would handle a transfer from New Orleans on New York.

Mr. Stern: It is understood that Exhibit C covers all the accounts current whether March or April?

The Master: Yes.

Q343. You have with you the documents and instructions covering what we have called the other three cases of letter of credit transactions? A. I have.

Mr. Stern: I offer to make proof with regard to those, and I may state for the purpose of the record that I understand that these documents represent instructions from the Whitney Central National Bank to the Hanover National Bank, with regard to the payment or non-payment of drafts drawn under letters of credit of the Whitney Central National Bank reciting that such drafts would be payable at the Hanover National Bank of New York City.

The Master: And that such drafts are not the subject matter in controversy in this suit?

Mr. Stern: I would say that suit is now pending on all of these drafts in the District Court of the United States for the Southern District.

The Master: You mean in this same matter?

Mr. Conboy: That is objected to.

The Master: It is excluded now, but without prejudice. At the end of all the testimony in this case, you may present your motion again. If you want to put that in to show that they were doing business, you may renew the offer and I will take it under consideration, but I see not the slightest necessity of taking it in now or passing definitely on it at this time.

Mr. Stern: Let us be clear as to that. These papers which you have before you, let the witness describe if he can, without stating the contents, as to what drafts they refer to, because it may be that some of these are not in controversy here.

The Master: I am left entirely in the dark, because I understand there is no complaint as yet, so I do not know what the controversy is about, but I am accepting Mr. Conboy's statement to the effect that the matter referred to in these documents is matter in controversy in these suits.

Mr. Stern: I am as much in the dark as your Honor regarding the papers which the witness has before him.

The Master: I am not inclined to give you the opportunity to see those papers at this time. That is a matter of a separate application for the Court to pass on, to enable you to form your complaint. That is not before me in this order. Whether you are entitled to see these checks is a matter for the Court to determine, and I am willing to determine it if it is sent to me under a separate order to pass on, but that is not here now.

Mr. Stern: Your Honor will hear me on that point when I offer them again, I suppose?

The Master: I understand there are other banks beside this bank that you will get testimony about. If you think it necessary to offer it again, I will hear you.

Mr. Stern: I do think so, your Honor, because we want to show a continuation of this business. These transactions follow right on with other similar transactions which the bank has entered into and as to which I have already offered testimony in these two cases.

Q344. Do your records disclose any transactions by the Hanover National Bank or instructions with reference to letters of credit of the Whitney Central National Bank, No. 4371, issued in favor of the Schilthuis American Trading Company, for \$690,000. A. Our records show that the Whitney Central National Bank of New Orleans issued a letter of credit, 4371, in favor of the Schilthuis American Trading Company of New York. The amount of the credit was up to \$690,000.

Q345. Did the Hanover National Bank receive any instructions from the Whitney Central National Bank with respect to such letter of credit or drafts drawn thereunder? A. We have instructions from the Whitney Central National Bank under date of May 13th, 1920.

Q346. May I see those instructions? A. I have not the original instructions; they are over in the warehouse.

Q347. Will you get those? A. Yes sir.

Q348. Now, this transaction with reference to the Schilthuis American Trading Company, was that a transaction similar to the five transactions as to which you have already testified?

Q349. Is this transaction similar in character to the transaction of the American Exchange National Bank letter of credit to which you testified in full? A. I would not say that this contract is similar in character; still it covered the same class of merchandise.

Q350. Have you alluded to this transaction at all in your testimony heretofore? A. This was one of the three I contended was in controversy. The witness has not been informed which are in controversy. I have no knowledge which of these transactions he refers to.

Mr. Stern: I am right now on this question of the Schilthuis transactions as to which, as far as I know and as far as any of us know, the Bank of America has absolutely nothing to do with it.

The Master: Then there is no objection to your inquiring about it.

Mr. Stern: But the impression was given to your Honor and me also that there were three instances, three transactions if you like, which would involve the plaintiff in this suit. I am testing that to see if it is so, and I find one of three that we were led to suppose the American Bank was involved in, had nothing to do with it. I

want to ask as to the other three, to find out who was involved in it.

Mr. Conboy: The other two are Ham & Seymour.

The Master: We had one Ham & Seymour, did we not?

Q351. Will you please state just exactly what this transaction was with respect to the Schilthuis American Trading Company? A. As stated before, the original instructions regarding this transaction is not in my hands but is on file in the warehouse. However, the summary which I presume to be true shows that the Whitney Central National Bank of New Orleans issued letter of credit No. 4371 in favor of the Schilthuis American Trading Company of New York, which credit expired on September 30th, 1920 up to the amount of \$690,000.00 covering a payment against 1500 tons of Java sugar at 20½ cents c.i.f. New York, Dutch standard 25 per cent or better, shipment to be made during May, June and July. That is the letter of credit per our instructions.

Q352. Was a copy of the letter of credit lodged with the Hanover National Bank? A. Copy of letter of credit was not lodged with the Hanover National Bank.

Q353. A description contained in a letter to the Hanover National Bank by the Whitney Central National Bank? A. A description of it is contained in a letter to the Hanover Bank by the Whitney.

Q354. And that was in the original letter of instructions which you have not before you at present? A. I presume so.

Q355. You will look up the letter of instructions later and produce it for me? A. Yes.

Q356. Have you produced here all the correspondence in the files of the Hanover National Bank other than the original letter of instructions with reference to this transaction? A. I have here to begin with, a copy of a letter of credit, that is, a photostat copy, which photostat copy I took from the duplicate copy of the letter of credit which was presented to me by the Schilthuis American Trading Company.

Q357. May I see that? A. (Witness hands document to Counsel).

Mr. Stern: I offer that in evidence.

Marked Plaintiff's Exhibit D.

Said Exhibit is as follows:

EXHIBIT D.

(Original)

Letter of Credit No. 4371

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans, La.

NEW ORLEANS, LA., May 1st, 1920 191

Messrs Schilthuis American Trading Co.,
New York, N. Y.

Dear Sirs:

We hereby authorize you to value on The Whitney Central National Bank, New Orleans, at sight, payable at the Hanover National Bank, New York, not exceeding in the aggregate Six hundred and ninety thousand dollars—to be used by you for invoice cost of 1500 tons Java Sugars at 20½c CIF New York, Dutch Standard 25 or better. to be purchased for account of Messrs. Wm. K. Seago & Co., New Orleans or whom it may concern, and to be shipped to New York by steamers during May-June-July, 1920. The drafts must be drawn and Bills of Lading dated in New York prior to the 30th day of Oct., 1920, and advice thereof given by you in original and duplicate, such advice to be accompanied by bill of lading, filled up to order of THE WHITNEY-CENTRAL NATIONAL BANK, NEW ORLEANS, with abstract of invoice endorsed thereon, or a copy of invoice accompanying the said bill of lading for the property shipped as above. All the bills of lading issued, except one retained by the Captain of the vessel carrying the cargo, are to accompany the drafts. The original invoice, properly certified by the United States Consul, to accompany draft.

And we hereby agree with the drawers, endorsers and bona fide holders of bills drawn in compliance with the terms of this Credit, that the same shall be duly honored on presentation at the office of The Whitney Central National Bank, New Orleans.

\$690,000.00—

We are, Dear Sirs,

Yours very truly,
WHITNEY-CENTRAL NATIONAL BANK,
FOREIGN EXCHANGE DEPARTMENT.
Royal R. Bastian,
Manager.

N. B.—Drafts must state on their face that they are drawn under Whitney-Central National Bank Credit.

*No. 4371 dated May 1st, 1920
Insurance to accompany draft*

—o—

A. (Continued). I also have here photostat copy of a draft and documents presented to the Hanover National Bank to the amount of \$648,682.78.

Q358. Was that draft paid by the Hanover National Bank?

Mr. Conboy: That is objected to as incompetent, irrelevant and immaterial, whether it was paid or not.

The Master: Objection overruled and exception.

A. The last paragraph of the letter very specifically states—

Q359. The letter says "We hereby authorize you," and so forth? A. That is true. In the last paragraph it says, "We hereby—

The Master: There is nothing to argue about until it is in; as I understand, it is not offered in evidence as yet.

Mr. Stern: Now I offer the draft and documents.

Mr. Monroe: We object to the draft and documents. The draft was not paid and the documents not taken up, and we contend they are entirely irrelevant to the issue.

The Master: Overruled and exception.

Marked Plaintiff's Exhibit E.

Said Exhibit is as follows:

EXHIBIT E.

\$648,682.78	New York, September 20th, 1920.
At Sight	Pay to
the order of ourselves	
PAY \$648682and78cts	Dollars
under Whitney Central Nat'l Bank L/c #4371 dated May 1st, 1920	
Value received and charge the same to account of Whitney Central	
Natl Bank for account of Wm. K. Seager & Co.	
To Hanover Nat'l Bank	SCHILTHUIS AMERICAN TRADING CO.
No. 49 New York City	W. C. Schilthuis

Endorsement on back:—

SCHILTHUIS AMERICAN TRADING CO.

W. C. Schilthuis

—o—

Cablegram from Vice Consul Sourabaya states corrected invoice issued (either 993, 994 or 995) sugar hereon stated to be Superior Java Sugar Dutch Standard #25 and/or better—Nason.

Cablegram dated 393 S F U H 27 Soerbaya on file Collectors office September 27th, 1920 file No. 35043.

R. V. Fredericks A.D.C.

SEAL.

—o—

SCHILTHUIS AMERICAN TRADING CO.

Produce Exchange Building

Telephone No. Broad 7126-7-8

United States Food Administration
License Number G-02431

NEW YORK, Sept. 20th, 1920.

NOTE TO MESSRS.. Wm. K. Seago & Co.,
New Orleans,
Louisiana.

INVOICE NO. L. C. 4371

Whitney Central National Bank of New Orleans
S/S "RONDO" and S/S "SOMMELSDYK"

1500 tons Superior Java Sugar Dutch Standard
25 or better Contract April 28th

S/S RONDO B/L/ May 31st

5033 bags 8233.99 piculs Net 508,531

Kilos — 1,119,823 lbs. @ 20½c per lb.

cif New York =

\$229,563 72

S/S RONDO B/L June 8th

4992 bags 8186.87 piculs Net 505,621

Kilos — 1,113,414 lbs. @ 20½c per lb.

cif New York =

228,249 87

S/S SOMMELSDYK B/L July 21st

5083 bags 8234.46 piculs Net 508,560

Kilos — 1,119,886 lbs. @ 20½c per lb.

cif New York =

229,576 63

Less Freight S/S RONDO as per Bill attached =	\$12,203 55	
Less Freight S/S RONDO as per Bill attached =	13,637 55	
Less Freight S/S SOMMELSDYK as per B/L 8234.46 piculs @ 5 Florins per picul = Fls. 41,172.30 at 31¼c	12,866 34	38,707. 44
		<hr/> \$648,682 78

Annexed to the foregoing photostat copy of draft and the foregoing photostat copy of invoice were photostat copies of three bills of lading, three insurance certificates, three Consular invoices, each containing certificates of origin, declaration of shipper of food and drug products, guarantees sugar #25 Dutch Standard, which said documents aforesaid respectively relate to the three respective shipments mentioned in the aforesaid invoice of May 31st, June 8th and July 21st.

Q340. Now, when this draft with the documents attached marked Exhibit E was presented to the Hanover National Bank was it paid?

Mr. Conboy: Same objection as before.

The Master: Overruled and exception.

A. It was not paid.

Q341. Have you the date of presentation of the draft with you? The draft is dated September 20th, 1920; was it on or about that time? A. It was on or about that date; I can get you that date.

Q342. It is sufficient if it was on or about that date? A. It was presented several times, that may account for it.

Q343. This draft, Exhibit E, was dated September 20, 1920, therefore the presentation was on or after that date? A. On or after that date. August 6th it was originally presented; then it was modified several times.

Q344. I am asking about this particular draft? A. That was presented on or about that date.

Q345. I ask you whether you had any instructions from the Whitney Central National Bank with reference to the payment of the draft?

Mr. Conboy: I object to that on the ground it is immaterial and irrelevant.

The Master: Objection overruled and exception.

Q365 (Continued). Just answer whether you had any instructions.

The Master: You mean other than the original letter?
Q365 (Continued). Other than the original letter of advice?
A. Under date of August 6th, a telegram sent by the Whitney Central National Bank in cipher.

Mr. Conboy: Wait a minute; you have only been asked whether you did receive instructions, not what the instructions were.

A (Continued). We received instructions by telegram on August 6th.

Q366. Have you got the telegram before you? A. I have.

Q367. Is it in cipher? A. It is in cipher.

Mr. Stern: I would like to have read into the record, your Honor, the translation of the telegram.

Mr. Conboy: I object to it on the ground it is immaterial and irrelevant.

The Master: Objection overruled and exception.

The Witness (reading):

"Referring to our letter of the 10th of May our Credit No. 4371 favor Schilthuis American Trading Company. Advise us by wire when drafts are presented. Make no payments until further advised by us.

(Sgd) Whitney Central National Bank

Addressed to the Hanover National Bank, date New Orleans, August 6th, 1920."

Q368. Were any further drafts drawn under this letter of credit presented to you? A. The draft was presented a number of times under different dates, beginning August 6th and subsequently to September 20th; sometimes it was presented four or five times a day so it is difficult to earmark.

The Master: That first draft, I understand, was not for the whole \$600,000.00?

Mr. Monroe: No, the first was for \$343,000.00.

The Witness: It was melted in together as they came along. The September one was the final one.

Q369. The one of which you had the photostat was not for \$600,000.00, but was for a considerable less amount? A. No, it was for \$648,000.00.

By Mr. Stern:

Q370. What are you looking up now? A. It appears from the records that the first draft was not for \$648,000.00, but was for four hundred thousand odd dollars; later on they consolidated the two and made the draft of September 20th \$648,000.00, which appears from the records before me. That was the final draft presented, all on account of one letter of credit.

Q371. All right, let us go on from that point. The Hanover National Bank had certain correspondence with the Whitney Central National Bank and the Schilthuis American Trading Company with reference to this letter of credit, did it not? A. We had certain correspondence with the Whitney Central National Bank of New Orleans.

Q372. And also with the Schilthuis American Trading Company? A. The Schilthuis American Trading Company communicated with us several times to which we replied.

Mr. Stern: I now offer in evidence copy of your letter to the Whitney Central National Bank of New Orleans dated May 13th, 1920; (I will offer them as one exhibit) copy of Hanover National Bank letter of May 17th, 1920 to the Schilthuis American Trading Company; letter from the Schilthuis American Trading Company to the Hanover National Bank of May 18th, 1920, copy of letter from the Hanover National Bank to the Whitney Central National Bank of August 6th, 1920, and copy of letter from the Hanover National Bank to the Schilthuis American Trading Company of August 6th, 1920.

Mr. Conboy: I cannot see, your Honor, that this has any materiality or relevancy to the inquiry before the Court just now.

The Master: The question I suppose that is before me is whether the various transactions and performances and correspondence and instructions constitute under the decisions, doing business in the State of New York by the New Orleans Company. Now, I cannot rely on a single item with any intelligence until some question arises, as they did about this being a lefthanded way of examining

defendant before trial. I have to take all of this and look into it as a whole; therefore I will overrule the objection and give you an exception.

Mr. Monroe: Will your Honor rule to withhold your decision because this Schilthuis case is subject to another litigation in New Orleans, and it would be a matter of hardship if this were made a matter of public record. If your Honor rules it relevant or material, may we suggest that it be not made a public record at the present time?

The Master: That may be done, and it will be marked for identification at this time. I will therefore note that this may be marked Exhibit F for identification, as confidential, in view of litigation in New Orleans.

Mr. Monroe: That pertains to all this correspondence in connection with the Schilthuis business?

The Master: With the whole Schilthuis business.

Said Exhibit F for identification is as follows:

EXHIBIT F

May 13, 1920.

Whitney-Central National Bank,
New Orleans, La.

Gentlemen:—

We are in receipt of your letter of the 10th instant, and note that you have issued your letter of credit No. 4371 in favor of Schilthuis American Trading Co. account Wm. K. Seago & Co. New Orleans, La. up to \$690,000.00 against certain documents covering shipment of 1500 tons Java Sugars at 20½c cif New York, Dutch Standard 25 or better, shipments to be made during May, June, July, the credit expiring Sept. 30, 1920,

When drafts are presented the matter will have our attention.

Yours very truly,

X X X X X.

CRK*AE.

Asst. Manager Foreign Department.

May 17th, 1920.

Messrs. Schilthuis American Trading Co.,
New York, N. Y.

Gentlemen:—

Referring to Letter of Credit No. 4371 issued in your favor by the Whitney Central National Bank, New Orleans, La., account of Wm. K. Seago & Co., New Orleans, for \$690,000.00,—

We are advised by the Whitney Central National Bank that this credit has been amended to read:

“Drafts to be accompanied by the usual shipping documents i.e., invoice, consular invoice, bill of lading and insurance certificate covering 1500 tons Java sugars at 20½c CIF New York, Dutch standard 25 or better, shipments to be made during May, June, July 1920.”

Kindly take note of above and acknowledge receipt of this letter to us.

Yours very truly,

JFS:HM

X X X X X
Asst. Manager, Foreign Dept.

—o—

United States Food Administration
License Number G-02431

SCHILTHUIS' AMERICAN TRADING CO.
Importers — Exporters
Produce Exchange

New York, 5-18-20.

Hanover National Bank,
New York City.

ATTENTION MR. CHARLES R. KEMPF.

Gentlemen:

We acknowledge receipt of your favor of May 17th in reference to Letter of Credit No. 4371, issued by Whitney Central National Bank, New Orleans, La.

As we advised you by telephone this credit has again been amended by the New Orleans bank, and we received their telegraphic advice to that effect.

No doubt, they will confirm same to you and we shall then be pleased to hear from you so that we can check the new amendment and convince ourselves that it reads exactly the way we wish and in conformity with our contract with Wm. K. Seago & Co., of New Orleans.

Yours very truly,

SCHILTHUIS AMERICAN TRADING CO.
W. C. Schilthuis.

WCS:WJF.

—o—

August 6, 1920.

Whitney-Central National Bank,
New Orleans, La.

Gentlemen:—

We are in receipt of your telegram of even date regarding your letter of credit No. 4371 in favor of Schilthuis American Trading Company, and note that you wish us to advise you by wire when drafts are presented and to make no payments until further advised by you.

We have today telegraphed you as follows and await your further advices in this connection:

"Telegram received Schilthuis presenting invoice 5033 bags and 4992 bags total \$132,498.00 shipment 998 tons Superior Java sugar. (Here are mentioned certain defects asserted to exist in accompanying papers.) Instruct."

Yours very truly,

CRK*AE.

X X X X X X
Asst. Manager Foreign Department.

—o—

August 6, 1920.

Messrs. Schilthuis American Trading Company
Produce Exchange
New York.

Gentlemen:—

Referring to Letter of Credit No. 4371 issued in your favor by the Whitney-Central National Bank, New Orleans, La. account of Wm. K. Seago & Co. New Orleans, for \$690,000.00,—

We beg to advise that we have received a telegram from the Whitney-Central National Bank, requesting us to advise them by wire when drafts are presented and to make no payments to you until further advised by them.

Yours very truly,

X X X X X X

CRK*AE.

Asst. Manager Foreign Department.

—o—

Mr. Stern: We offer as part of the preceding exhibit the following letters and telegrams: Letter from the Whitney Central National Bank to the Hanover National Bank, dated August 6th, 1920; letter from the Whitney Central National Bank to the Hanover National Bank, dated August 11, 1920; telegram from the Whitney Central National Bank to the Hanover National Bank dated August 11, 1920; telegram from Whitney Central National Bank to Hanover National Bank dated August 13, 1920; telegram from Whitney Central National Bank to Hanover National Bank dated September 22nd, 1920; telegram from Whitney Central National Bank to Hanover National Bank dated September 23rd, 1920; letter from Whitney Central National Bank to the Hanover National Bank dated September 23rd, 1920; letter from the Whitney Central National Bank to the Hanover National Bank dated September 30, 1920; two telegrams from Whitney Central National Bank to Hanover National Bank dated September 30, 1920.

Mr. Conboy: We object to them on the ground that they are immaterial and irrelevant so far as the issue before the Master is concerned. We ask in the event your Honor receives them that your Honor will hold them confidential on the ground that they are part of documents in the suit already referred to.

The Master: The suggestion that they be held confidential is acceded to; the other is overruled and exception.

Said letters and telegrams are as follows:

WHITNEY-CENTRAL NATIONAL BANK

John E. Bouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legler, Vice-President

of New Orleans.

Capital and Surplus \$4,400,000.00

E. H. Keep, Cashier
N. E. Bertel, Assistant Cashier
S. J. McMinn, Assistant Cashier
W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leary, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Moise, Assistant Cashier
John J. McGoey, Assistant Cashier
R. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., August 6th, 1920.

Hanover National Bank,
Foreign Dept.,
New York, N. Y.

Dear Sirs:—

Referring to our letters of May 10th, and May 14th, in regard to Letter of Credit # 4371, issued in favor of the Schilthuis American Trading Co., New York, for \$690,000, covering shipment of 1500 tons Java Sugars, account Messrs Wm. K. Seago & Co., New Orleans. We wired you today as follows:—

“Referring to our letter of 10th, May, our credit 4371 favor Schilthuis American Trading Co., advise by wire when drafts are presented make no payments until further advised by us.

From which you will note that we are to be advised by wire when drafts are presented and no payments are to be made until you receive further instructions from us.

Thanking you for your attention, we remain,

Yours very truly,

Royal R. Bastian
Manager Foreign Dept.,

RRB:B

WHITNEY-CENTRAL NATIONAL BANK

of New Orleans.

Capital and Surplus \$4,400,000.00

John E. Bouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legler, Vice-President

E. H. Keep, Cashier
N. E. Bertel, Assistant Cashier
S. J. McMinn, Assistant Cashier
W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leary, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Moise, Assistant Cashier
John J. McGoey, Assistant Cashier
R. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., August 11th, 1920.

Hanover National Bank,
New York City.

Dear Sirs :

We late last evening received your wire of August 10th,
reading :

“Despatch received regarding letter credit forty three
seventy one Schilthuis American Trading Company
parties willing to modify invoices and give their
guarantee to cover discrepancies between documents
and letter credit as follows. (Here are set forth certain
details of proposed modification and guarantee) to pre-
vent legal complications necessary for amicable arrange-
ments for prompt honoring of draft otherwise repudia-
tion will have bad effect.”

to which we replied this date as follows :

“Refer our credit forty three seventy one Schilthuis
American Trading Company on the strength of
documents presented by Schilthuis (Here certain defects
stated to exist in the documents are mentioned) had to
request you to decline payment of drafts presented
by Schilthuis against credit referred to.”

and shall thank you to continue to refuse payments on the
drafts drawn under letter of credit referred to, until
otherwise instructed by us.

Yours very truly,

P:WB

M. Pyk
Vice-President.

—o—

WESTERN UNION TELEGRAM

1920 Aug 11 PM 195 Broadway, N. Y.

Received at D95NOCDR 166

New Orleans La 636P Aug 11 1920

Hanover National Bank 2821
New York N Y

Your wire Schilthuis American Trading Company our letter
of credit forty three hundred seventy one reads fifteen
hundred Java sugar at twenty and one half cents cif New
York Dutch standard twenty five or better insurance to
accompany draft stop according to your wire documents

attached to drafts are (Here are stated certain defects asserted to exist in documents) this is a material variance from contract and our customer insists that draft be not lifted unless contract fully complied with stop for your information recent shipments of Java sugars have been lamentably under contract grade a fact now well known in the sugar trade please do not lift draft without specific instructions and wire us just what documents are presented we are very far from repudiating our credit but must insist that advantage is not taken of customers by delivery of inferior goods or improper documents

Whitney Central National Bank
755P

—o—

WESTERN UNION TELEGRAM.

1920 Aug 11 PM 51

9 Pine Street

Rector 541 & 9288

Received at Q New York

Q N Y

CO 103 E 8/11/20

B101No 69 2 Extra

Neworleans La 1140A 11

Hanover National Bank

0861 Newyork N Y

Refer our credit forty three seventy one Schilthuis American Trading Company stop as documents presented are not according to stipulations of credit (Here are stated certain defects asserted to exist in documents) our principals have instructed us to refuse payment of draft referred to they insisting upon inspection of sugar and terms of credit lived up to

Whitney Central National Bank
of Neworlean.

Aug 11 1920 2 55 PM

—o—

WESTERN UNION TELEGRAM.

1920 Aug 13 PM 4 116

9 Pine Street

Rector 541 & 9288

Received at Q New York

Q N Y

B331A 104 1/70

C O 1920 Aug 13 PM 3 52

Neworleans La 113B 13

Hanover National Bank
1116 Newyork NY

Your wire we have just wired Schilthuis as follows quote your wire among the discrepancies which we note even at this distance between documents tendered and our credit are the following reported by Hanover Bank first bills of lading not filled up to order this Bank second consular invoice does not show Java sugars Dutch standard twenty five or better third insurance not in order fourth all bills of lading

Aug 14 1920 8 31 AM
1920 Aug 13 PM 3 52

B331A Sheet 2/34

except captains not attachd fifth credit calls for fifteen hundred tons and that quantity not tendered sixth freight not prepaid plainly you have not complied with your obligations and cannot expect payment end quotation

Whitney Central National Bank.

—o—

POSTAL TELEGRAM.

Received at 20 Broad St., N. Y.

Tel. 1278 Rector

21BMHR 31 Dupe 240 AM

New Orleans La Sept 22 1920

Hanover Natl Bank

Foreign Dept Newyork N Y

Refer to wire against our letter of credit four three seven one advise what documents Schilthuis is presenting whether warehouse receipts or bills lading telegram does not clearly indicate this

Whiteney Central Natl Bank

Duplicate

M P

Sept 20 1920 8 30 AM

Bladings presented
order L— and to you

—o—

WESTERN UNION TELEGRAM.

1920 Sept 23 PM 5 29

Received at 38 Broad St. N.Y. Broad 7021
C129No 33 1920 Sep 23 PM 4 59

Neworleans La 343P 23 CO E 9/24/20

Hanover Natl Bank 2055
Foreign Dept Newyork NY

Referring to wire against our letter of credit forty three
seventy one if possible get copy from Schilthuis of bill lading
tendered you in connection with above credit and forward to
us promptly

Whitney Central National Bank MP
Sep 24 1920 8 38 PM

—o—

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans, La.

September 23rd, 1920.

The Hanover National Bank,
Foreign Department, E 9/27/20
New York City.

Dear Sirs:

Re: Our Letter of Credit No. 4371.

Your wire of September 20th. was delivered to us in a
garbled condition by the Telegraph Company and we had to
have it repeated. We have wired you to-day as per attached
confirmation.

We do not understand the statement that Schilthuis'
attorneys made a legal tender of \$5,000. to cover warehouse
charges and that they also tendered binders covering insur-
ance on goods in warehouse. This would indicate that part
of the goods covered by documents are already in warehouse.
We do not understand how this can be if they are covered by
Bills of Lading.

It occurred to us that possibly they had warehoused
the goods represented by the Bills of Lading which they
tendered some weeks ago and which we refused to accept;
but, if they did this, we should think that they would have
had to surrender the Bills of Lading in order to get the goods
to put them in warehouse and they would then not have Bills
of Lading to tender you as they appear to have again done.

We would therefore appreciate your writing us your understanding of this point. We wired you later on this evening, as per confirmation herewith, requesting you, if possible, to get a copy of the Bill of Lading tendered you on September 20th.

Thanking you for the attention which you have given this matter, we are,

Yours very truly,

M. Pyk
Vice President.

Dic. MP-:B.

— o —

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans, La.

September 30th, 1920.

The Hanover National Bank,
Foreign Department,
New York City.

L 10/5

Gentlemen:

Re. our Letter of Credit No. 4371

We are in receipt of your two telegrams of this date and have wired you, as follows:

"Your two wires of Sept. 29th. referring our Letter of Credit No. 4371 received. We approve your action in refusing payment of drafts and reserve right to rely upon all discrepancies existing between documents presented and letter of credit"

which we would now confirm.

In addition to the objections noted by you, we note the following additional discrepancies, based upon the information now at hand:

(Here are specified certain details of discrepancies asserted to exist between documents and letter of credit.)

Of course not having had opportunity to inspect the documents ourselves, we have no means of being certain of all discrepancies that exist, although we are confident we have had the benefit of your very best consideration and attention.

In the event of any litigation with these people, of course we desire to reserve all of our rights.

With best wishes, wea re,

Yours very truly,

Dic-B.

M. Pyk
Vice-President.

—o—

WESTERN UNION TELEGRAM.

1920 Sep 3 PM 6 40

65 Broadway, N. Y.

DA

Received at

E34NO XHG 42

New Orleans 455P Sep 30 1920

Hanover Natl Bank Foreign Dept

2265

New York

Your two wires of September twenty ninth referring our letter credit forty three hundred seventy one received we approve your action in refusing payment of drafts and reserve right to rely upon all discrepancies existing between documents presented and letter of credit.

Whitney Central National Bank

620 PM

Oct 1 1920 8 39 AM

—o—

WESTERN UNION TELEGRAM.

1920 Sep 30 PM 12 24

Q NY

Received at

9 Pine Street

Rector 541 & 9288

A187NO 37 Q New York

Q w 1920 Sep 30 PM 12 01

Neworleans La 1015 A 30

Hanover Natl Bank Foreign Dept

0700

Newyork N Y

Wire received regarding our letter credit four three seven one confirm your action of refusing payment draft presented by Shilthuis American Trading Company on strength of one draft not properly drawn and documents accompanying not in order.

Whitney Central Natl Bank.

F

WHG

Sep 30 1920 11 48 PM

Mr. Conboy: It is understood that the Master's rule as to its being held in a confidential character will be observed by Counsel for the plaintiff.

Mr. Stern: We will be very glad to do so.

Mr. Monroe: We might want to object to this, so I want an opportunity to examine this File No. 30.

Adjourned to May 24, 1921;
at 10:30 A.M.

New York, May 24th, 1921;
10:30 A. M.

Met pursuant to adjournment.

PRESENT: The Master,

Mr. Stern,

Mr. Conboy,

Mr. Monroe.

WILLIAM ARTHUR SUYDAM, resumed.

Direct Examination by Mr. Stern (Continued):

Q373. Mr. Suydam, you have testified as to three transactions wherein a letter of credit was issued by the Whitney Central National Bank providing that drafts under it would be payable at the Hanover National Bank; those transactions being described in this testimony as the American Exchange National Bank transactions, the Anglo-Indian Produce Company transactions and the Schilthuis American Trading Company transactions; now, did the Hanover National Bank have any other similar transactions for the account of the Whitney Central National Bank, the details of which you have before you? A. Since my last testimony of yesterday, I have had assistants in the Hanover National Book go through the records prior to that date or during the year 1920 and I have been able to find four other transactions. The first known as File No. 25, relates to Whitney Central National Bank's letter of credit No. 4228 in favor of Carlos Alfert & Co. of New York, which I submit for inspection.

Q374. Now, will you state what that transaction consisted of? A. Under date of June 29th, 1920, the Whitney Central National Bank of New Orleans telegraphed us as follows, in cipher, which translated I have before me:

"Charge our account. Pay draft. Carlos Alfert & Co. New York covering ninety-five percent cost two thousand bags Cuban centrifugal sugar at nine and one-eighth cents cost and freight New Orleans; draft to be accompanied by invoices, consular invoices, negotiable B/L evidencing shipment of sugar as stated. Wire when paid."

On receipt of that wire we acknowledged receipt of it and placed it on record. Our record calls for payment to Carlos Alfert & Company by order of Whitney Central National Bank as per their telegram of June 29th, 1920, draft to be accompanied by invoice, Consular invoice, negotiable bill of lading evidencing shipment as stated, wire when paid. Shipments covering ninety-five percent invoice cost, two thousand bags Cuban centrifugal sugar at nine and one eighthths cents cost and freight New Orleans. The documents were presented and under date of June 30th, 1920, we paid Carlos Alfert & Company in New York for 2,000 bags of sugar at 95 percent, at $9\frac{1}{8}$ cents, total of \$54,900. The shipment was 657,788 net pounds. The bills of lading were attached, Consular Invoice and invoice.

Q375. And what became of the merchandise covering these bills of lading, if you know? A. We forwarded the bills of lading to New Orleans under registered mail in our letter of June 30th, as per exhibit. Payment for documents.

Q376. I notice in this file a telegram dated June 29th, 1920, from the Hanover National Bank to the Whitney Central National Bank reading as follows:

"Documents presented by Carlos Alfert & Co. of New York invoices amount fifty five thousand dollars against your letter credit number forty two twenty eight. No advice. Bills of lading order Sherck instead yourselves. No draft attached. Bills of lading bear clause steamer not responsible for separation marks or expenses incurred thereby or for bags dirty, stained, sweated, torn or mended. Shall we pay them?

(signed) Hanover National Bank."

Was it your practice to examine documents presented to you by drawers of drafts under transactions similar to this? A.. It is our practice to examine carefully every document that is presented to us for account of one of our depositors. Should we find any marks on the bill of lading that would in any way interfere with that bill of lading being known as other than a clean bill of lading, it is our duty to our depositors for us to

draw it to his attention and ascertain from him whether it is his instructions to accept a bill of lading in that condition

Q377. If you limit it to the Whitney Central National Bank it was your practice and you considered it your duty to call to their attention, after examination of all documents any omissions or changes or anything else in the documents which might constitute them, in your opinion, defective, is that correct? A. It is our practice with the Whitney Central National Bank to draw it to their attention as well as our practice to do the same in the case of any of our depositors whose business we handle, corresponding to this.

Q378. Now, what other transactions of a similar nature have you? A. I have several other transactions of a similar nature, three of which refer to the same credits, practically, only under other numbers.

By the Master:

Q379. You mean Carlos Alfert & Company same credits? A. Oh no, I beg your pardon. That is all of Carlos Alfert & Company. I have three credits in favor of Nottebohm (Hermanos) Bros., Guatemala City; do you want to take them together; they are the same people only different shipments.

By Mr. Stern:

Q380. They are different letters of credit? A. Different letters of credit.

Q381. Then let us take them separately? A. The File No. of the first is No. 25.

Q382. The same as the other? A. The same as the other. I gave this file No. 25 also. The credit number is 4273.

Q383. Is that the number of the letter of credit? A. That is the number of the letter of credit.

Q384. The letter of credit was issued by the Whitney Central National Bank? A. We have no copy of the Whitney Central National Bank letter.

Q385. I say was it their letter of credit? A. Their credit. Their letter of February 5th, 1920 (which I am getting from Jersey) we were advised that they had issued a letter of credit No. 4273 in favor of Nottebohm (Homanos), Guatemala City, for \$13,300 against certain documents consisting of invoice, Consular invoice, insurance, Bill of lading attached to sight draft. Drafts and bill of lading are to be added in Guatemala City prior to April 20th, 1920, covering a shipment of 500 quintals of coffee to New Orleans under our letter of credit (mean-

ing the Whitney Central National Bank) No. 4273 up to \$13,300. The documents were presented under date of March 20th, 1920, for 37 bags of coffee against invoice, copy of bill of lading and we received a telegram to pay as shown in the documents, amounting to \$1,468.53; also on March 30th, 1920, for 47 bags of coffee as per telegraphic instructions to pay \$1,890.30; also on April 6th, 1920, for 197 bags of coffee as per telegram to pay \$7,818.93; also on May 1st, 1920, for 24 bags of coffee against telegram to pay amounting to \$965.26, the total on payments amounting to \$12,143.02.

Q386. Have you a copy of the letter of credit? A. We have not.

Q387. What became of the original drafts after they were paid? A. All documents including drafts were forwarded to New Orleans.

Q388. Were there drafts drawn payable at the Hanover National Bank? A. I have no photographic copy of it. It is so long ago; it is pretty hard for me to say.

Q389. Were they drawn on the Hanover National Bank? A. If you will just let me read the file. (documents handed to witness) From the records of the Hanover National Bank I would presume that there were no drafts attached, as the records show against invoice, copy of bill of lading and telegram to pay.

Q390. Were the invoices made out to the Hanover National Bank? A. The invoices were not made out to the Hanover National Bank; the invoices were probably made out to Stewart Carnal & Company of New Orleans, that being the customer.

Q391. In your letter to the Whitney Central National Bank of February 9th, 1920, referring to this letter of credit, you state that you would

“be pleased to negotiate draft drawn in accordance with the terms of same”;

just what did you mean by negotiating draft? A. May I read that please?

Q392. Certainly. (document handed to witness) A. As stated before in previous testimony, all the credits issued by the Whitney Central National Bank in New Orleans require that the documents and drafts if draft is necessary, be presented at the office of the Whitney Central National Bank. Under those circumstances, we place this phrase in our letter, that we will be pleased to negotiate the draft, if drawn in accordance with the terms of same, meaning terms of credit. Not

having in our possession the actual credit, but only instructions from the Whitney Central National Bank, we naturally must lean on that letter of credit and we take the drafts in from the presenting party and forward them to the Whitney Central National Bank.

Q393. After having first made payment of them? A. We have instructions from the Whitney Central National Bank to charge them to their account.

Q394. Where you have such drafts and you pay them, those drafts are drawn on the Hanover National Bank, are they not, payable at the Hanover National Bank? A. This draft you are talking about?

Q395. I am talking about the drafts you have referred to. You have referred to drafts generally. A. Frequently, I would say generally, they are drawn on the Whitney Central National Bank of New Orleans care of the Hanover National Bank.

Q396. But in this case you say there were no drafts? A. According to the record, there do not appear to have been any drafts. My memory does not go to each individual case. If you will allow me to read the correspondence—

Q397. I think you are possibly mistaken about it. A. The records do not show there was a draft. Now I will read.

By Mr. Monroe:

Q398. By "records", you mean the slip on the outside? A. The slip on the outside, yes. In the letter of April 6th, it says,

"Referring to your letter of February 5th, 1919, opening letter of credit 4273, we have today paid, as per enclosed draft, (I see there was a draft enclosed) invoice, insurance policy, copy of bill of lading, covering shipment of 197 bags of coffee for \$7,818.93."

We also refer in that letter to letter of credit No. 4266.

Q399. Now, what is the next transaction of a similar character? A. The next transaction is the order of the same party known as File No. 24.

By the Master:

Q400. That is Nottebohm Bros.? A. Nottebohm Bros., Guatemala City, for the account of Stewart Carnal & Co., known as letter of credit No. 4266. Our instructions were, in Whitney Central National Bank's letter dated January 27th, 1920, which requested us to kindly honor upon presentation,

"to the debit of our account, draft drawn by Messrs. Nottebohm (Hermanos) upon us, payable with your good

selves under our letter of credit 4266 to the extent of \$20,500 and draft is to be accompanied by abstract of invoice, insurance certificate and bill of lading, covering shipment of 800 quintals of coffee to New Orleans, account of Stewart Carnal & Co. Credit expires May 15th, 1920."

The original instructions we have sent to Jersey, and which we will produce, as soon as we can receive them.

Under date of March 18, 1920, we paid for 214 bags of coffee against the draft, copy of bill of lading and telegram to pay \$8,040.66; also on March 20th, 76 bags of coffee under the same conditions, \$3,120.16 and March 30th, 23 bags of coffee under the same conditions \$808.18; under date of April 6th, 1920, for 133 bags of coffee under the same conditions \$4,673.33, and under date of April 22nd, 1920, for 38 bags of coffee under the same conditions for \$1,335.24.

Q401. In describing your instructions I remember your stating that draft was to be drawn by Nottebohm Bros. upon "us", meaning thereby Whitney Central National Bank. I do not recall your referring to the previous sentence "payable with your good selves"? A. You will find that in the record; it is in there.

Q402. That means with the Hanover National Bank of New York? A. Yes.

Q403. You say you have sent to Jersey for the original letter? A. I have memorandums to send to Jersey for the original letter.

Q404. It is right here, as far as I can see. A. Yes, I did not notice that it was in the files. I will have that scratched out.

Q405. I hand you a letter from the Whitney Central National Bank, dated January 28th, 1920, addressed to the Hanover National Bank and ask you if that is your original letter of instructions in connection with this transaction as to which you have just testified? A. That is the original instructions.

Mr. Stern: I will read that into the record:

"WHITNEY CENTRAL NATIONAL BANK

New Orleans, Louisiana, January 27th, 1920.

Hanover National Bank,
New York.

Dear Sirs:

Kindly honor upon presentation, to the debit of our account draft drawn by Messrs. Nottebohm Hnos., Guate-

mala City upon us payable with your good selves under our L-C 4266 to the extent of \$20,500. Draft is to be accompanied by abstract of invoice, insurance certificate and bill of lading, covering shipments of 800 quintals of coffee to New Orleans, account Messrs. Stewart Carnal & Co. Credit expires May 15th, 1920.

Thanking you for your attention and awaiting your acknowledgment, we remain,

Yours very truly,

Mauritz Pyk,
Vice president."

Q406. And the drafts for the amounts that you have mentioned, were paid by you in accordance with that letter of instructions? A. Yes.

Q407. When I say "you" I mean the Hanover National Bank? A. It was paid by the Hanover National Bank.

Q408. In these transactions as to which you have testified, a commission is charged by the Hanover National Bank in connection with this service in the matter, was it not? A. We endeavor to get a commission.

Q409. Do your records disclose whether you got it or not? A. It is our custom with the interior banks to suggest a commission, but it does not always go.

Q410. Do you recall in this particular transaction, or these particular transactions whether you received a commission? A. If you will allow me to read the letters and certain documents I will tell you. That is the usual phrase we put on a letter of this kind. "We presume your customers will have no objection to charging the usual commission of a quarter of one percent on this transaction." But judging from the volume of the Whitney Central National Bank, you can pretty well say that we did not get it. As a rule these banks will come back and state—

Q411. Just confine yourself to these particular cases? A. I have no record of a commission actually being paid on this transaction.

Q412. How about the other transactions as to which you have testified? A. In those transactions this custom, as I started to say, is something of recent origin. It is not put on every letter but is more in the nature of a feeler whether they can claim it from the customer.

Q413. Have you any record which will enable you to testify whether or not you received a commission? A. By looking up around the date of this letter, of April 22nd, on the Account Current, we can tell whether the charge is made.

Q414. I wish you would have the same looked up? A. I can do that right away.

Q415. I do not want to isolate one transaction. When we get through with all these transactions, if you can get someone to look up all the accounts current as to all of them and supply you with the necessary information, I will appreciate it. A. I will do that. My recollection is that there is no charge.

Q416. In this transaction, by your telegram of March 19th, 1920, you advise the Whitney Central National Bank of certain discrepancies in the papers which were presented to you, did you not? A. Evidently, from this telegram. The next transaction is a credit known as No. 4260, File No. 22.

By the Master:

Q417. Nottebohm Bros. still? A. Nottebohm Bros., the same parties. Credit No. 4260. Our instructions received from the Whitney Central National Bank of New Orleans, the original letter of which is on file in Jersey and which we will get you at a later date, was dated on January 16th, 1920, and requested us to "kindly pay to the debit of our account draft drawn by Nottebohm Hermanos, Guatemala City at sight for \$13,500 with invoice, Consular Invoice—"

Mr. Monroe: Do you want him to list those invoices all the time? Is it not just as well if he will say just "documents attached"?

Mr. Stern: That is satisfactory to me.

. (continued) with documents attached covering shipment of 500 quintals of coffee to New Orleans under our (meaning Whitney Central National Bank) letter of credit No. 4260, account of Messrs. Stewart Carnal & Company, New Orleans, draft and bills of lading to be attached in Guatemala City prior to May 10th, 1920; \$13,500; under date of March 18th, we paid for a hundred bags of coffee against draft, copy of bill of lading and telegram to pay \$4,160.83. On March 20th, for 234 bags of coffee under the same conditions, \$9,711.88.

Q418. What was the total amount paid under that letter of credit? A. \$13,872.70.

Q419. On March 17th, 1920, the Hanover National Bank telegraphed the Whitney Central National Bank in regard to

the presentation of a draft drawn under this letter of credit, with documents. In regard to the documents attached, there was no Consular invoice and only copy of bill of lading attached, asking for instructions as to whether or not to pay that draft; is that correct? Only copy of bill of lading attached and only one copy? A. Copy of bill of lading means an unsigned copy, not a negotiable copy. Frequently exporters of coffee and other commodities will send the original bill of lading direct to the consignees and in that case they present either the duplicate bill of lading or a copy; the copy not being in negotiable form, the Hanover National Bank would not pay unless they had instructions to pay for an unsigned bill of lading.

Q420. You were going to produce the original letter of instructions covering this? A. Yes sir, that comes from Jersey. Now, the last one we have is—

Q421. This is the eighth, I believe? A. Yes, this is the additional one we found. This is known as letter of credit No. 4488, File No. not on. Instructions were contained in the Whitney Central National Bank of New Orleans letter dated November 12th, 1920, in favor of Arnold, Dorr & Company for account Louisiana Bag Corporation, draft drawn by Arnold, Dorr & Company accompanied by documents free from particular or general average ship delivery order and bill of lading evidencing a shipment, for shipment from Calcutta during the month of November, 1920, credit to expire by limitation on February 8th, 1921, covering a shipment of 50 bales, 100,000 yards 40-10-½ ounce standard Calcutta burlap in iron bound bales of 2,000 yards at six and one half cents per yard C.I.F. New York, quality to be standard Calcutta burlap and payment to be made on arrival and discharge of goods in New York. Kindly note that draft is only to be paid on arrival and discharge of goods in New York, up to \$6,500.

Under date of November 23rd, we received a letter from the Whitney Central National Bank of New Orleans which states,

“Kindly note the same has been amended to read ‘payable against proper documents consisting of Consular invoice, proper insurance certificate and ship delivery order, all other conditions remaining unchanged. 11-26-1920’.

Under date of January 24th, 1921, from the Whitney Central National Bank of New Orleans, our customer advises us that they are informed by Messrs. Arnold, Dorr & Company that the goods shipped under the above credit are

on the steamship City of Brisbane, which sails from Calcutta, December 13th, 1920. According to the letter of credit, shipment was to have been made during the month of November, 1920. We therefore request you kindly have Arnold, Dorr & Co. furnish sufficient proof that the goods were shipped within the time stated; this information is to be supplied by an on board bill of lading, the contract not containing an 'alongside' clause before paying the draft".

Q422. Where is the original letter of instructions, is that in New Jersey? A. That we will get you, sir. That is one we are sending for.

Q423. You haven't the letter of credit or copy of it in your file? A- We never were in possession of letter of credit or copy of it. I might say it is customary for the Whitney Central National Bank or any other bank issuing letters of credit to hand them direct to the principal.

Q424. But they did not in this case send you a copy? A. They only seldom sent us a copy.

Q425. Is this a correct statement, that a draft for \$6,500 drawn under this letter of credit was presented to the Hanover National Bank for payment on February 7th, 1921, and again presented for payment on February 8th, 1921—A. After banking hours, at 3 or 5 p.m.

Q426. And that payment of both of these drafts was refused?

A. It was one draft. They sent it twice.

Q427. Payment on both of these occasions of this draft was refused by the Hanover National Bank? A. Yes.

Q428. And that the refusal in both cases was with or without previous instructions from the Whitney Central National Bank? A. The previous instruction of the Whitney Central National Bank was that if they had information to the effect that the goods were not shipped according to the terms of the credit—

Q429. Just a moment. You have referred to that. Other than what you have referred to already, you have no other instructions? A. No other instructions.

Q430. And you are going to get me the original letter? A. I will get the original letter. That is all I have in the way of credits that I know of for the moment.

Q431. Except in regard to the drafts drawn by the Bank of America? A. Those two that are in controversy.

Mr. Stern: Now, is it your Honor's pleasure to take up the matter of the drafts which were presented by the Bank of America?

The Master: You might make your offer now.

Mr. Stern: Yes, but I would like to ask him some preliminary questions, or was it your idea that I should wait until the close of the testimony?

The Master: I thought you would wait until you got through with all the banks and everything else. If you have here from this bank and other banks ten or fifteen instances of transactions you certainly are not prejudiced by the exclusion of two more. You made your case as much by showing fifteen transactions as by showing seventeen, and inasmuch as by allowing this to go in, perhaps I am giving you an opportunity of examination before trial, which may or may not be the practice of the Federal Court at this moment. I have postponed it because I gathered from what I saw around the room, that you were getting sufficient instances to make your argument on and to make it as effectively as if you had the two instances that are in the main subject controversy.

Mr. Stern: I know of no instances, if your Honor please, of these particular transactions, with banks other than the Hanover. They seem to have limited this business to the Hanover and my purpose in offering the Bank of America drafts was to show the continuous nature of this business and also the large volume of it. These Bank of America transactions I might state to your Honor involve a very large sum of money, in the neighborhood of a million dollars.

Mr. Conboy: Suppose you state on the record what they amount to, and we will concede it. I do not see that it makes any material difference what amount it makes, if it is two hundred thousand dollars or a million dollars. The question is if he is doing business.

The Master: Yes, the rule would apply to a small bank which is lucky to get a small letter of credit out just as much as it would to a large bank which deals in millions.

By Mr. Stern:

Q432. This letter, dated May 10th, 1920 from the Whitney

Central National Bank to the Hanover National Bank is the original letter of instructions in connection with the Schilthuis American Trading Company transaction, is it not? A. It is.

Mr. Stern: I will ask that this letter be introduced in evidence.

Mr. Conboy: We will have a photostat made of it for the record.

Mr. Stern: I offer in evidence letter from the Whitney Central National Bank to the Hanover National Bank dated May 10th, 1920, which contains the original instructions with reference to the Schilthuis American Trading Company letter of credit No. 4371.

Said letter is as follows:

WHITNEY-CENTRAL NATIONAL BANK
of New Orleans.

John E. Bouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
N. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legler, Vice-President

Capital and Surplus \$4,400,000.00

E. H. Keep, Cashier
N. E. Bertel, Assistant Cashier
S. J. McMain, Assistant Cashier
W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leory, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Moise, Assistant Cashier
John J. McGoey, Assistant Cashier
B. R. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 10th, 1920.

E 5/13/20

Hanover National Bank,
Foreign Exchange Dept.,
New York, N. Y.

Dear Sirs:—

Kindly pay upon presentation, to the debit of our account with your goodselves, drafts drawn by Messrs. Schilthuis American Trading Co., New York, against our L/C # 4371 account Messrs. Wm. K. Seago & Co., New Orleans, up to \$690,000.00, drafts to be accompanied by invoice, insurance certificate, warehouse receipt or custom-house permit and delivery order, covering shipment of 1500 tons Java Sugars at 20½c cif New York, Dutch standard 25 or better, shipments to be made during May, June, July, the credit expiring Sept. 30, 1920.

Kindly advise us by wire as the respective drafts are paid.

Thanking you for your attention, we remain,

Yours very truly,

RRB:GJB

Royal R. Bastian
Manager Foreign Dept.,

T J W

I will read in evidence the letter of the Whitney Central National Bank dated May 12th, 1920:

"WHITNEY CENTRAL NATIONAL BANK

New Orleans, Louisiana.

May 12th, 1920.

Hanover National Bank,
New York, N. Y.

Dear Sirs:

We wired to you today as follows:

'Notify and pay to the American Exchange National Bank up to \$422,000 upon delivery to you of invoice, weight certificates, negotiable warehouse receipt of responsible warehouse issued your order, our account, covering six thousand bags Cuban turbinated sugar, sold Bishop Perkins by George Kaiser of Milwaukee. Hold warehouse receipt further instructions. Forward remaining documents to us. Advise by wire when paid'. Please effect insurance warehouse our account. Kindly note that the above refers to same lot of sugar mentioned in our letter of May 11th.

Thanking you for your attention and waiting your advise of payment thereof, we remain,

Yours very truly,

Royal W. Bastian,
Manager Foreign Department.

I offer in evidence letter from the Whitney Central National Bank to the Hanover National Bank, dated May 14th, 1920, instructing the Hanover National Bank in regard to the amendment of the letter of credit No. 4371 in connection with Schilthuis American Trading Company transaction; photostat copy to be placed in the record instead of the original.

Said letter is as follows:

WHITNEY-CENTRAL NATIONAL BANK

John E. Rouden, Jr., President
Frank B. Williams, Vice-President
Harry T. Howard, Vice-President
J. D. O'Keefe, Vice-President
Mauritz Pyk, Vice-President
Chas. deB. Claiborne, Vice-President
S. M. Whitney, Vice-President
Eugene H. Roberts, Vice-President
James A. Robin, Vice-President
J. F. Flournoy, Jr., Vice-President
John Legier, Vice-President

of New Orleans.
Capital and Surplus \$4,400,000.00

E. H. Keep, Cashier
N. E. Bertel, Assistant Cashier
S. J. McMain, Assistant Cashier
W. B. Allison, Assistant Cashier
C. W. Kay, Assistant Cashier
E. E. Leovy, Assistant Cashier
Leeds Eustis, Assistant Cashier
Frank V. Moise, Assistant Cashier
John J. McGoe, Assistant Cashier
R. B. Bastian, Mgr. Foreign Dept.

Cable Address: Whitbank

New Orleans, La., May 14th, 1920

Not our credit
but Whitney Central # 4371.

Hanover National Bank,
Foreign Dept.,
New York, N. Y.

Dear Sirs:—

Referring to our letter of May 10th requesting you to pay upon presentation, to the debit of our account, drafts drawn by Messrs. Schilthuis American Trading Co., New York, against our Letter of Credit # 4371, account Messrs. Wm. K. Seago & Co., New Orleans up to \$690,000.

Kindly note that the credit in question has been amended to read:—

Drafts to be accompanied by the usual shipping documents ie:—

Invoice, consular invoice bill of lading and insurance certificate covering 1500 tons Java sugars at 20½c CIF New York, Dutch standard 25 or better, shipments to be made during May June July, 1920.

Kindly advise us by wire as the respective drafts are paid.

Thanking you for your attention and awaiting your acknowledgment, we remain,

Yours very truly,

Royal R. Bastian
Manager Foreign Dept.,

RRB:GJB

Q433. There was some reference in yesterday's testimony to the payment of transfer taxes in connection with fifty shares of Gulf Oil Corporation Stock. I hand you a letter from the Whitney Central National Bank, dated March 22nd, 1921, and ask you whether that is the letter of instructions received

by the Hanover National Bank from the Whitney Central National Bank with respect to the fifty shares of stock of the Gulf Oil Corporation referred to? A. That is the letter dated March 22nd, 1921 as follows:—

Mr. Stern: Just a moment. I offer in evidence the letter referred to, and with the permission of the Master I will read it into the record.

It is on the letter head of the Whitney Central National Bank of New Orleans.

“WHITNEY CENTRAL NATIONAL BANK,

New Orleans, Louisiana, March 22nd, 1921.

Hanover National Bank,
New York City.

Gentlemen:

We enclose certificate No. A-3984 for fifty shares Gulf Oil Corporation, in the name of W. Nash Read. We are forwarding under separate cover irrevocable power of attorney executed by Mr. Read, authorizing the transfer of the enclosed certificate.

We also enclose our draft on Messrs. Hoyt & Co., No. 71 Broadway, your City, for \$3,450 upon payment of which, kindly deliver to them ten shares Gulf Oil Corporation, and have the remaining shares issued in the name of W. Nash Read, in four certificates of ten shares each, and forward to us in due course.

Kindly credit our account with proceeds with telegraphic advice to us.

Thanking you in advance for your usual kind attention, we remain,

Yours very truly,

Nelson Whitney,
Vice President.

By Mr. Stern:

Q434. Were those instructions carried out? A. They were carried out. Those consist of all the letters you asked for.

Mr. Stern: I will return these to you.
(Documents returned to the witness.)

Q435. Now, in regard to that Cohen, Schwartz & Co. payment of \$5,000, you have your records before you to enable you to state just exactly what that transaction was, have you not?

A. A cipher telegram was received by the Hanover National Bank under date of March 1, 1921 from the Whitney Central National Bank instructing them to "notify and pay to Cohen, Schwartz & Co., 15 William Street, \$5,000 for account of L. Pedron & Co., Havre, France, by order of King, Brown & Co., Inc., and charge the first mentioned amount to our account."

Q436. And those instructions were carried out by the Hanover National Bank? A. Those instructions were carried out by the Hanover National Bank and credited to the deposit account of the Whitney Central National Bank of New Orleans.

By Mr. Monroe:

Q437. The telegram gave you those instructions? A. The cipher telegram.

Cross Examination by Mr. Conboy:

XQ438. Mr. Suydam, the Hanover National Bank is a banking institution organized under the Acts of the Federal Congress relating to National Banks, is it not? A. The Hanover National Bank is a banking institution under a Federal Charter granted by the National Banking Act.

XQ439. Where does it transact its business? A. At 11 Nassau Street, City and County of New York.

XQ440. Has it any branches or agencies any place else? A. It has not.

XQ441. Do you know whether the Whitney Central National Bank of New Orleans, which is the Defendant in this action, has any office in the City of New York? A. The Whitney Central National Bank of the City of New Orleans has no office in the City of New York.

XQ442. Or any branch here? A. It has no branch here.

XQ443. Or any person designated upon whom service of process can be had? A. I know of no person in the City of New York upon whom process could be served.

The Master: That is statutory. I suppose the witness could not testify to that.

Mr. Conboy: I understand there is no claim as to that.

XQ444. The Hanover National Bank of which you are one of the vice presidents, has had transactions with the Whitney

Central National Bank to your knowledge, for approximately 30 years, as I understand it? A. It has had transactions with the Hanover National Bank of the City of New York, to my knowledge, for about 29 years.

XQ445. And how does the deposit account of the Whitney Central National Bank with the Hanover National Bank originate, Mr. Suydam? A. The Whitney Central National Bank send us from time to time their letters, dated in New Orleans, with enclosures consisting of checks, coupons or other items which they have for collection on this and some other cities of the United States.

XQ446. And when the Hanover National Bank receives such letters with such enclosures as you have just described, what does the Hanover National Bank do? A. The items are received through the mail, by express or any other method of forwarding items of this kind, principally through the mail and by express to the Hanover National Bank; the letters are opened, the checks and items contained therein are checked out and the items are placed through the Clearing House for collection. Other items drawn on other cities are forwarded through the usual collection channels to their destination for collection, the proceeds being credited to the account of the Whitney Central National Bank as per the total of their letter.

XQ447. Will you state, please, what kind of items you received for collection from the Whitney Central National Bank? A. It is difficult for me to give you a description of all the items contained therein. There are numerous letters, but I judge that such items are the usual items presented to them by their customers in New Orleans, or exchange bought by them in New Orleans on New York or vicinity.

XQ448. Do they consist of checks? A. Checks, drafts, notes and other items, payable in this vicinity.

XQ449. Coupons representing interest upon bonds that are payable in New York? A. We have received coupons, being the interest on bonds payable in New York.

XQ450. In short, then, you receive from the Whitney Central National Bank for collection items in the shape of checks; do you receive notes? A. And notes.

XQ451. Bills of exchange? A. Bills of exchange.

XQ452. Coupons some times? A. Coupons.

XQ453. Payable in this vicinity? A. Payable in this vicinity.

XQ454. Payable in this vicinity, relates to all items which you receive for collection, does it? A. Yes.

XQ455. Now, when you receive these various items, for instance, in the case of checks do you put the checks through the Clearing House? A. Yes, if they are Clearing House checks.

XQ456. If they are not, you collect them in the towns in this vicinity where they are made payable? A. We collect them in the towns in this vicinity where they are payable, in the usual collection channels.

XQ457. When you receive the proceeds of such checks and other negotiable instruments as you have described, what do you do with such proceeds? A. On receipt of a letter enclosing the items if contained in a cash letter, which is usually composed of what is known as cash items, items that are payable on demand, they are collected through the Clearing House and the proceeds placed to their credit, subject to collection.

XQ458. That is, placed to the credit of the Whitney Central National Bank? A. Placed to the credit of the Whitney Central National Bank subject to their collection.

XQ459. And if, for some reason or other, payment of these instruments is refused, what happens then? A. The items are charged back to the Whitney Central National Bank on their deposit account and advice is given them either by mail or telegraph, according to their instructions.

XQ460. And the account in which the collections which you make for the Whitney Central National Bank and on which you make charges that you have just described, is known as a deposit account? A. A deposit account, yes sir.

XQ461. How many of those deposit accounts have you got in the Hanover National Bank? A. May I ask, do you mean similar deposit accounts?

XQ462. Similar deposit accounts? A. We have over 4,000 similar deposit bank accounts.

XQ463. And those similar deposit bank accounts are all accounts of banks that are located all over the United States, are they not? A. North, South, East and West, all over the United States.

XQ464. Every state of the Union, I presume is represented? A. Every state of the Union.

XQ465. And every city of any size in every State of the Union? A. Nearly every city.

XQ466. Now, are all of these accounts that you refer to handled in the same fashion as the Whitney Central National Bank? A. They are all handled in the same fashion according to the business that they send us. Some localities will send a different class of business than another.

XQ467. Do you receive instructions from time to time from the Whitney Central National Bank as to making payments out of their deposits? A. We receive instructions from the Whitney Central National Bank to make payments either by telegraph or by mail.

XQ468. And when you have received such instructions and made the payments that you are directed to make by the communications that you refer to, what record do you make of the transaction? A. We make the payment, secure a receipt whenever possible and charge their account according to their instructions.

XQ469. So that, in short, the Whitney Central National Bank has a deposit account with you in which is credited the amount of the collections that you make for them from time to time and against it are debited the payments that you make for them from time to time? A. Yes sir.

XQ470. And the difference between the amount of such receipts and the amount of such payments constitute the daily balance of that account? A. Yes sir.

XQ471. On which I understand you to say you pay interest? A. At $2\frac{1}{4}$ per cent.

XQ472. In what respect is such an account, deposit account, different from a deposit account that you have for the ordinary individual depositor? A. It is in all respects the same, with the exception that the ordinary individual deposit account does not receive interest.

XQ473. Is the fact that interest is paid upon it due to the fact that it is a deposit from a bank or is it due to the size of the balance that is kept there? A. A recent decision of the Federal Reserve Board authorized a certain amount of interest to be paid on bank accounts, governed by the discount rate of the Federal Reserve Board. The majority of bank accounts kept in the Reserve cities, and known as Reserve accounts, some of which are active and some of which are not, therefore money kept in a city like New York, it is the custom to pay them interest on their deposits by almost every bank having such accounts.

XQ474. In connection, Mr. Suydam, with testimony that you gave originally respecting the transaction with the American Exchange National Bank, beginning at page 42 of the typewritten record, it would appear therefrom that the Hanover National Bank had issued a letter of credit to the American Exchange National Bank at the instance and request of the

Whitney Central National Bank; subsequently in your testimony it is indicated that that was not the manner in which the transaction was handled. Having had the papers before you now, will you please tell us what the facts are in that respect?

A. On receipt of a cipher telegram dated May 12, 1920, from the Whitney Central National Bank of New Orleans which read:

"Notify and pay to American Exchange National Bank up to \$422,000 upon delivery to you of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse, issued your order, our account, covering six thousand bags Cuban turbinated sugar sold to Bishop Perkins by George Kaiser, Milwaukee: Hold warehouse receipt, further instructions; forward remaining documents to us; advise by wire when paid. Please effect insurance warehouse our account,"

which dispatch was received by us, the Hanover National Bank, on May 12, 1920. We issued under date of May 12, 1920, the following letter to the American Exchange National Bank:

"Gentlemen:

The Whitney Central National Bank of New Orleans, Louisiana, have requested us to pay to you up to \$422,000 upon delivery of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse issued to us to our order, account of the Whitney Central National Bank of New Orleans, Louisiana, covering six thousand bags of Cuban turbinated sugar sold to Bishop Perkins by George Kaiser, Milwaukee, Wisconsin.

When forwarding us draft against the above, kindly refer to Export Department, mentioning this letter. In advising you as above, we are acting merely as agents of the Whitney Central National Bank, New Orleans, and cannot assume any responsibility for a continuation of their instructions nor have we any discretion in regard to offering their advices in regard to documents which are required. Kindly note that we have been requested to effect insurance warehouse account of the Whitney Central National Bank."

That was a letter sent in response to their telegram.

XQ475. Specifically, when the documents referred to were received by you, what did you do then? A. We received the documents, paid for them, \$428,630.84, and charged the amount

to the account of the Whitney Central National Bank, New Orleans, deposit account, holding the documents subject to their further instructions.

XQ476. In how many different ways do you pay out from the deposit account of the Whitney Central National Bank the funds that are on deposit to its credit with your bank? A. As I understand it, you ask me to enumerate several of the ways in which we pay out?

XQ477. Yes. A. In the first instance, they draw checks on us under the signatures of their officers.

XQ478. Those checks are drawn in New Orleans? A. Those checks are drawn in New Orleans and domiciled at the Hanover National Bank; second, they send us telegrams—

XQ479. Send you telegrams from where? A. They send us telegrams from New Orleans addressed to the Hanover National Bank instructing us to pay parties here or any other cities in our vicinity, a certain amount of funds to the debit of their deposit account on our books; third, they instruct us to pay to the Federal Reserve Bank for transmission through the Federal Reserve System, to one or the other Federal Reserve Banks in other cities, certain amounts of money to the debit of their deposit account.

XQ480. Where do these instructions come from? A. By telegraph or mail.

XQ481. From where? A. From New Orleans. Fourth: they accept time bills in New Orleans payable at a future date, which bills are presented either through the Clearing House or at our counter for certification by the presenting bank, which are placed to the debit of their deposit account on the date of maturity.

XQ482. And where are those acceptances dated? A. I think I said in my testimony, New Orleans.

XQ483. Are there any other methods? A. There are no other methods that I can think of at the moment, except payment of securities, which have been mentioned in my previous testimony, if you want that added. We also have instructions from time to time to receive from parties here securities and pay for them to the debit of their deposit account. These instructions originate from New Orleans.

XQ484. In every instance where you paid out money from the account of the Whitney Central National Bank, from whom did the instructions to make such payments proceed? A. The instructions to make such payments came from the office of the Whitney Central National Bank of New Orleans, Louisiana.

XQ485. Do they come from the office of the Whitney Central National Bank of New Orleans or do they come from the office of the Whitney Central National Bank of New Orleans at New Orleans? A. They come from the Whitney Central National Bank of New Orleans, I think that is the title of the Bank.

XQ486. But where do they come from, New Orleans? A. They come from New Orleans.

XQ487. That is where such instructions emanate, is that right? A. Yes.

XQ488. Now, you testified that you have made loans to the Whitney Central National Bank? A. We have.

XQ489. I think you have described the character of the security which you have for such loans? A. I have.

XQ490. Such security consists of securities that are held where? A. In New Orleans.

XQ491. And what are those loans evidenced by? A. We have on file a note which is forwarded us from New Orleans signed by the president and the cashier of the Whitney Central National Bank of New Orleans.

XQ492. And that evidences the loan which you make? A. That evidences the loan which we make.

XQ493. And that note is dated in New Orleans? A. That note is forwarded from New Orleans under resolution of the board of directors.

By the Master:

XQ494. And specifies the securities, I suppose? A. They send us a letter earmarking the securities.

By Mr. Conboy:

XQ495. Do you know of any instance where a customer has drawn his check on the Whitney Central National Bank and cashed it at the Hanover National Bank?

The Master: A customer of whom?

Mr. Conboy: The testimony is not very specific. I am referring to page 48 of the record, which reads:

"In such cases where the customer draws his check on the Whitney Central National Bank and cashes it at the Hanover National Bank, is there any record made of that transaction";

did you understand that question, Mr. Suydam? A. As I understand the question, should a customer of the Whitney Central

National Bank of New Orleans appear at our counter and request us to cash his check drawn on New Orleans, is that the way I am to understand it?

XQ496. Yes. A. That check would not be cashed unless we had specific instructions from the Whitney Central National Bank of New Orleans.

XQ497. To so cash it? A. So cash it and charge their account.

XQ498. Do you know of any instances where it has been done? A. As I mentioned in my previous testimony, it is so infrequent, that it is pretty hard to mention any specific case.

XQ499. Have you the data in respect to the American Exchange National Bank transactions before you; that is the first of the specific instances to which your attention was directed? A. I have.

XQ500. Can you tell us from that where the transaction itself originated? A. The transaction originated by telegraph being dispatched from the city of New Orleans.

XQ501. I think you have given us that. That is, the transaction between the Hanover National Bank and the Whitney Central National Bank originated in the telegram that you have read us and which was subsequently incorporated in the record; that you received from the Whitney Central National Bank, but what I was getting at is the original transaction for which the amount specified in the telegram of the Whitney Central National Bank was apparently the purchase price; can you tell us where that transaction originated?

The Master: Is there anything on the face of the papers to indicate where it originated?

Mr. Conboy: Yes sir.

The Master: I suppose he does not know anything about it except what the papers show.

Mr. Conboy: I presume not.

XQ502. It has reference, according to your testimony, and your testimony was given from these papers, at page 52 of the record, which apparently has reference to a transaction of six thousand bags of sugar sold to Bishop Perkins (I suppose that is not an eccleastical title but the name of a man)? A. It is the name of a man.

XQ503. Do you know where Bishop Perkins' place of business is? A. No, I do not. It does not show in this testimony.

XQ504. You said on page 52 of the typewritten record when you were asked where are they located, you said, "We do not know Bishop Perkins", that is an answer to Q230. I want to ascertain if I can, whether your records give any inkling as to the domicile of Bishop Perkins; the sugar was sold, you say, by George Kaiser of Milwaukee to Bishop Perkins? A. I have before me a copy of a letter dated September 13, 1920, addressed to Bishop C. Perkins & Co., 203 North Peter Street, New Orleans, Louisiana, copy of the letter signed by the trustees of the estate of William Baird, which established the fact, I think, that they are in New Orleans.

Mr. Conboy: Do you require any better proof of it than that, Mr. Stern?

Mr. Stern: I do not dispute it. I do not know anything about it. I do not know whether they have a New York office. I imagine they do not.

The other party in that transaction was Farr & Co.

The Master: They were the brokers.

Mr. Conboy: Kaiser was the seller of the sugar. I think that is as far as we need go, in view of Mr. Stern's statement that he does not dispute that Bishop Perkins is domiciled in New Orleans.

Mr. Stern: Just one question.

By Mr. Stern:

XQ505. Will you please answer this question about the Federal Sugar Refining Company, where they come in in connection with the American Exchange National Bank? A. The documents were received by us from a bank here in the city. We did not know what transactions that sugar had gone through before it came to us. Apparently the Federal Sugar Refining Company and this man in Milwaukee were interested in it. Whether Kaiser bought it from the Federal Sugar Refining Company or not, I do not know; nor do I know what those transactions were.

By Mr. Conboy:

XQ506. But your papers do apparently show that Kaiser sold it to a concern named Bishop Perkins of New Orleans? A: Yes, that is a matter of record.

Mr. Stern: There is a reference here in the letter of the American Exchange National Bank to the Federal Sugar Refining Company, and the proceeds of that transaction in the hands of the Hanover National Bank, and that reference I want the witness to explain.

The Witness: If you will refer to the heading of this letter, you will notice that the heading is The Whitney Central Trust & Savings Bank.

By Mr. Stern:

XQ507. But it is in this file, is it not, that you have been referring to? A. Yes.

XQ508. And it refers to the same sugar as to which you have been testifying? A. This letter is sent by the Whitney Central Trust & Savings Bank, New Orleans, to the assistant secretary—

XQ509. But it refers to the same transaction, does it not? A. I cannot tell until I compare it. This refers to 4350 bags.

Mr. Monroe: The Whitney Trust & Savings Bank is an independent institution.

By Mr. Stern:

XQ510. In a later letter, we have a reference to a telegram that you received from the Whitney Central National Bank?

A. It is addressed to the Whitney Central Trust & Savings Bank.

XQ511. You refer to the telegram that you received from the Whitney Central National? A. That might be possible; it might have had a cipher code for transmission.

XQ512. There is a further reference to a letter of the Whitney Central National Bank and the insurance premium on the 450 barrels of sugar, which on cancellation of the policy is to be credited to the Whitney Central National Bank? A. From the correspondence that I see here, it is evident that the 4,350 bags of sugar stored at Baird's Storage, was originally under the Whitney Central Trust & Savings Bank, for in our letter, of November 3, 1920, addressed to the Federal Sugar Refining Company of 91 Wall Street, we state, "at the request of the Whitney Central National Bank and on behalf of their client, Bishop Perkins & Company, we take pleasure in handing you herewith warehouse receipts 5226 covering 4300 bags of sugar stored at Baird's Erie Basin Stores 4 and 6."

These instructions which you have from the above mentioned bank are that the 95% of the value of the above mentioned merchandise, figured at the rate of \$7.02 per hundred pounds or \$87,030.45 is to be paid to us ten days after date and the balance of 5% to be paid, etcetera."

It is evident that this is a separate transaction molded in with the other. I may have to separate these two papers to get them in line.

XQ513. The net result is, that 450 barrels of sugar which were not included in the original transaction was sold to the Federal Sugar Refining Company for the Whitney Central Trust & Savings Bank and the details of the transaction carried out by you at the request of the Whitney Central National Bank, is that correct A. I cannot tell you all of that until I separate this information and read it over. It is quite voluminous and it is difficult for me to absorb. I will separate those two transactions and give it to you.

By Mr. Conboy:

XQ514. Referring to the Anglo-Indian Produce Company, Limited, transaction that begins at page 59 of the minutes, from whom did your original instructions proceed? A. Our original instructions were forwarded to us from New Orleans, Louisiana, on the letterhead of the Whitney Central National Bank, New Orleans, dated January 10, 1921.

XQ515. And they are all contained in the record? A. They are all in the record.

XQ516. And you have stated in detail what you did when you received those instructions? A. I have.

XQ517. After you received those documents, what did you do with them? A. After receiving these documents, on January 21, 1921, we forwarded by registered mail to W. B. Allison, Assistant Cashier of the Whitney Central National Bank, draft, invoice, insurance certificate, consular invoice and the bills of lading covering 15 bales of jute bags, charging their deposit account \$1123.28.

XQ518. And did you say that the documents were forwarded to Louisiana? A. The documents were forwarded by registered mail to Louisiana to the Whitney Central National Bank of New Orleans, Louisiana.

XQ519. From an examination of the record in the Nottebohm Brothers' transaction, can you tell me for whose account those transactions apparently were? A. In each and every case re-

garding letters of credit, No. 4273, No. 4260 and No. 4266, they were for the account of Stewart Carnal & Co., Ltd., New Orleans, Louisiana.

XQ520. Can you tell me for whose account this Arnold, Dorr & Co. transaction was, as far as the record shows? A. For the account of the Louisiana Bag Corporation, New Orleans, Louisiana.

Redirect Examination by Mr. Stern:

RDQ521. In this American Exchange National Bank transaction, if I understand correctly, the goods were all warehoused in the name of the Hanover National Bank after payment therefor was made by that bank; is that right? A. Our instructions from the Whitney Central National Bank of New Orleans under date of May 12, instructed us to notify and pay the American Exchange National Bank up to \$422,000 upon delivery to us (Hanover National Bank) of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse, issued to your order, meaning the Hanover National Bank's order.

RDQ522. So that the goods were stored in the name of the Hanover National Bank? A. The Hanover National Bank.

RDQ523. And the Hanover National Bank procured the goods to be insured, taking out policies of insurance in its name? A. It took out policies of insurance in its name.

RDQ524. Do you know how many insurance policies the Hanover National Bank took out covering these goods? A. We have a number of them here; I have not counted them.

RDQ525. I would like to get the number. A. There is a lot of it here; some in the name of the Wisconsin National Bank.

RDQ526. In that case, it was transferred, is that right? A. The Hanover National Bank held, at several times, 15 policies covering insurance on this sugar either in their own name or transferred to their name.

RDQ527. Transferred or assigned to the Hanover National Bank? A. Transferred or assigned to the Hanover National Bank.

RDQ528. Those policies were all taken out and delivered to the Hanover National Bank in the City of New York or were assigned to the Hanover National Bank and delivered to it in the City of New York, were they not? A. These policies were all handed to the Hanover National Bank at its counter in the City of New York.

RDQ529. You do not quite answer my question.

Mr. Conboy: I submit that is a direct answer.

By Mr. Stern:

RDQ530. He said they were handed to him and I asked him whether they were not all taken out here in the City of New York or assigned to the Hanover National Bank and delivered to them in the City of New York? A. I would have to examine the policies to see whether the assignment was executed by the First National Bank of Wisconsin, or by the agent at Milwaukee or the agent at the City of New York; I have not anything to see what agencies of the insurance company assigned it; I would have to examine each separate policy.

RDQ531. The policies thus were all delivered to the Hanover National Bank, New York City? A. They were delivered at our counter.

RDQ532. And all of this insurance was received by you for the account of the Whitney Central National Bank of New Orleans, was it not? A. As specified in the telegram—

RDQ533. I have no objection; you may finish your answer, Mr. Suydam. A. These documents were received at the counter of the Hanover National Bank in the City of New York; the insurance was effected by the Hanover National Bank of the City of New York according to instructions contained in the Whitney Central National Bank's telegram of May 12th.

By the Master:

RDQ534. Which you have already read? A. Which I have already read and it is a matter of record.

By Mr. Stern:

RDQ535. And this insurance and these warehouse receipts covered the property during the period when it was in storage in the State of New York? A. It did.

RDQ536. Now, you had considerable correspondence both from and to your bank in connection with this transaction, did you not? A. I did.

RDQ537. Can you state, merely approximately the number of letters and telegrams in that correspondence? A. You have counted up to 63.

Mr. Conboy: Say upwards of 63; that would cover any number, I think.

(A. continued) I will say that we had correspondence to the extent of 63 letters or more.

RDQ538. When was the original letter of instructions written? A. May 12, 1920, the original cipher telegram of instructions was dated.

RDQ539. The last letter in the file, if I recall correctly, was December 10, 1920, that is letter from the Whitney Central National Bank? A. The letter apparently received from the Whitney Central National Bank was under date of December 10, 1920. It is a matter of record already.

RDQ540. Leaving aside this American Exchange National Bank transaction altogether, did the Hanover National Bank ever issue its letter of credit to any person or persons for the account and pursuant to the instructions of the Whitney Central National Bank? A. That is a matter of record which I would have to look through, covering several years.

RDQ541. You cannot testify but it may have done so, is that it? I do not think we covered that point in the previous testimony. A. From the records at hand, available at present, it appears to be the only credit which we issued, to the best of my belief and knowledge.

RDQ542. Will you at your convenience make inquiries concerning that, Mr. Suydam, and advise me of the fact? A. I would have to go back 30 years.

RDQ543. I will not ask you to go back that period; say within the last two years? A. Yes sir.

In order not to encumber the record with an unnecessary repetition of testimony, it is, for the purposes of this motion only, stipulated, between the parties, the Defendant reserving all rights under its special appearance and the Plaintiff consenting to such reservation, that, at the time of the service of the summonses herein, the transaction or course of conduct between the Whitney Central National Bank of New Orleans and the banks whose names are herein below set forth were of the same character as the transactions or course of conduct with the Hanover National Bank, except that such transactions or course of conduct was less in volume than with the Hanover National Bank and that such transactions or course of conduct with said other banks did not involve letters of credit or drafts payable under letters of credit.

National Bank of Commerce,

Liberty National Bank, Now merged into the
New York Trust Company,

Mechanics & Metals National Bank,

National City Bank,

Chase National Bank.

All of the above banks being located and having their offices in the City, County and State of New York.

Mr. Stern: I offer to prove that the Whitney Central National Bank under date of April 17, 1920, issued its two letters of credit No. 4333 and 4334 to Messrs. Ham and Seymour of New York City, New York, in the following form:

"Letter of Credit No. 4333

WHITNEY CENTRAL NATIONAL BANK
OF NEW ORLEANS, LA.

New Orleans, La., April 17, 1920.

Messrs. Ham & Seymour,
New York, New York.

Dear Sirs:

We hereby authorize you to value on the Whitney Central National Bank, New Orleans, at sight, payable at the Hanover National Bank, New York, not exceeding in the aggregate Two Hundred Forty Six Thousand, Four Hundred Dollars to be used by you for invoice cost of 500 tons Java White Sugar at 22c per pound duty paid, to be purchased for account of Messrs. John Barkley & Co., Ltd., New Orleans, or whom it may concern and to be shipped to New York, 50 tons July, 1920, 135 tons July August, 1920, 315 tons August September 1920.

The drafts must be drawn and Bills of Lading dated in New York prior to 15th day of December, 1920, and advice thereof given by you in original and duplicate, such advice to be accompanied by Bills of Lading, Customhouse Permit and Delivery Order filled up to order of the Whitney Central National Bank, New Orleans, La., with abstract of invoice endorsed thereon, or a copy

of invoice accompanying the said Bill of Lading for the property shipped as above.

All the Bills of Lading issued, except one to be mailed to us and one to be retained by the Captain of the vessel carrying the cargo, are to accompany the drafts. The original invoice, properly certified by the United States Consul, to be forwarded to us.

We hereby agree with the drawers, endorsers and bona fide holders of bills drawn in compliance with the terms of this Credit, that the same shall be duly honored on presentation at the office of the Whitney Central National Bank, New Orleans.

\$246,400.00 We are Dear Sirs,

Yours very truly,

WHITNEY CENTRAL NATIONAL BANK
FOREIGN EXCHANGE DEPARTMENT.

N.B. Drafts must state on their face that they are drawn on Whitney Central National Bank Credit.

Royal R. Bastian,
Manager.

No. 4333, dated April 17, 1920.

Insurance by Seller."

That the Hanover National Bank was notified by the Whitney Central National Bank of both of said letters of credit and of their terms.

I ask a ruling on that offer of proof.

Mr. Conboy: We object to it on the ground that it is cumulative, among other things.

The Master: Upon the statement I see no difference between this transaction and some of the other transactions which we already have in evidence here covered by proof and stipulation and for that reason I sustain the objection on the ground that it is cumulative and it is unnecessary to take the time multiplying any more instances.

Mr. Stern: Exception. I desire to make the following proof:

That thereafter and during the months of October, November and December, 1920, drafts in the aggregate face

amount of said letters of credit, reciting that they were drawn under the said letters of credit, were drawn by Ham & Seymour to the order of the Bank of America and accompanied by certain documents were presented by the Bank of America for payment at the Hanover National Bank, and payment of said drafts was refused by the Hanover National Bank, stating that it was acting under telegraphic instructions from the Whitney Central National Bank.

Mr. Conboy: The same objection.

The Master: Same ruling.

Mr. Stern: Exception.

Adjourned until Wednesday, May 25, 1920, at 12 o'clock.

New York, May 25th, 1921;
12:00 A. M.

Met pursuant to adjournment.

PRESENT: The Master,

Mr. Stern,

Mr. Conboy,

Mr. Monroe.

WILLIAM ARTHUR SUYDAM, resumed.

By the Master:

Q544. Just one question, Mr. Suydam: you have explained to us the extent of this practice or condition or whatever you may call it of correspondent banks and from your testimony we understand pretty well what the result of that is, in the way of transactions: is that practice or condition or whatever you may call it in the way of a correspondent bank something of recent growth or is it something that has been going on in banking practice for some considerable time? A. It has been common in banking practice as long as I have been here, in the 29 years of my service.

Q545. I did not know but that it had something to do with the Federal Reserve System? A. No, in fact, it had prevailed more before the Federal Reserve System was in force.

By Mr. Conboy:

Q546. Is the same thing true of the manner in which letters of credit are handled, Mr. Suydam? A. Why, letters of credits have been handled more by banks in the inland in the last ten or fifteen years. It is a common practice, however, all over the country, to handle letters of credit similar to the manner in which we are handling the Whitney Central National Bank.

Q547. And the instances that have been referred to in connection with this testimony, are they typical of the letter of credit transactions that have been handled during the period you speak of, in all banks? A. They are typical of all transactions that we handle for other banks. Some of them use a little different wording, for instance, a bank in Philadelphia will say, in issuing his own credit, "through" the Hanover National Bank; a bank in Chicago will issue its own letter of credit and will say "payable at the Continental and Commercial National Bank" or the Hanover National Bank.

By the Master:

Q548. It is merely a question of phraseology? A. Just a question of wording.

By Mr. Stern:

Q549. This practice of bankers' acceptances has grown up largely since the Federal Reserve Act was passed, has it not? A. The question of acceptances and the question of letters of credit are two different things.

Q550. I understand that. My question is that it has grown up largely since the Federal Reserve Act. A. Acceptances were not authorized until the Federal Reserve Act went into existence.

Q551. And the practice of banks issuing letters of credit, in order to finance the importation of merchandise, has that practice not grown to much greater proportions during the last five or six years than it was before? A. I should say in the last ten years it has increased materially.

By Mr. Conboy:

Q552. Had it prevailed prior to that time but to a lesser degree? A. It had prevailed prior to that time, but was not so popular as it has been in the last ten years.

Mr. Stern: I now offer in evidence, and if there is no objection, will read into the record the following letters

of instruction from the Whitney Central National Bank to the Hanover National Bank as follows: January 10, 1921 with reference to the Anglo-Indian Produce Company transaction.

**"WHITNEY-CENTRAL NATIONAL BANK
of New Orleans**

New Orleans, La.

January 10, 1921.

Hanover National Bank
New York, N. Y.

Dear Sir:—

Kindly charge our account and pay to the Anglo-Indian Produce Company, Ltd., 156 Broadway, \$990.00, and also expenses covering ocean freight, insurance and cost of Consular papers on presentation of draft on H. N. Cook in our care with full set of shipping documents attached, covering 6000 coffee bags to Puerto Barrios, Guatemala.

Kindly forward the draft and documents to us immediately on receipt, and oblige,

Yours very truly,

(signed) W. B. Allison
Assistant Cashier"

WBA:N

I now offer letter dated January 16th, 1920 with reference to a Nottebohm Bros. transaction.

**"WHITNEY-CENTRAL NATIONAL BANK
of New Orleans**

New Orleans, La. Jan. 16th, 1920.

Hanover National Bank,
New York.

Dear Sirs:—

Kindly pay, to the debit of our account, draft drawn by Nottebohm Bros., Guatemala City, at sight, for \$13,500.00 with invoice, consular invoice and bill of lading attached covering shipment of 500 quintals of coffee to New Orleans, under our letter of credit No.

4260 for account of Messrs. Stewart Carnal & Co. Ltd., New Orleans. Draft and bills of lading to be dated in Guatemala City prior to May 10th, 1920.

Thanking you for your attention thereto and awaiting the receipt of the documents, we are

Yours very truly,

(signed) M. Pyk
Vice Prest."

I offer in evidence letter dated January 27th, 1920 with reference to a Nottebohm Bros. transaction:

"WHITNEY-CENTRAL NATIONAL BANK
of New Orleans

New Orleans, La. Jan. 27th, 1920

Hanover National Bank,
New York.

Dear Sirs:

Kindly honor upon presentation, to the debit of our account, draft drawn by Messrs. Nottebohm Hnos., Guatemala City, upon us, payable with your goodselves, under our L/C No. 4266, to the extent of \$20,500. Draft is to be accompanied by abstract of invoice, insurance certificate and bill of lading covering shipment of 800 quintals coffee to New Orleans account Messrs. Stewart Carnal & Co., credit expires May 15th, 1920.

Thanking you for your attention and awaiting your acknowledgement, we remain,

Yours very truly,

(signed) M. Pyk
Vice Prest."

I offer in evidence letter dated February 5th, 1920, with reference to a Nottebohm Bros. transaction:

"WHITNEY-CENTRAL NATIONAL BANK
of New Orleans, La.

Feb. 5th, 1920.

Hanover National Bank,
Foreign Dept.
New York.

Dear Sirs:—

Kindly pay, to the debit of our account, draft drawn by Messrs. Nottebohm Hnos., Guatemala City, at sight, for an amount up to \$13,300 with invoice, consular invoice, insurance certificate and bill of lading attached covering shipment of 500 quintals of coffee to New Orleans, under our L/C No. 4273 for account of Messrs. Stewart Carnal & Co., Ltd., New Orleans. Draft and bills of lading are to be dated in Guatemala City prior to April 20th, 1920.

Thanking you for your kind attention thereto and awaiting the receipt of the documents, we are,

Yours very truly,

(signed) Royal R. Bastian
Manager Foreign Dept."

I offer in evidence letter dated November 13th, 1920 with reference to the Arnold, Dorr & Co. transaction:

"WHITNEY-CENTRAL NATIONAL BANK
of New Orleans.

New Orleans, La. November 13, 1920.

Hanover National Bank,
New York, N. Y.

Dear Sirs:—

Kindly pay upon presentation, to the debit of our account, draft drawn by Messrs. Arnold Dorr & Co., New York, up to \$6,500.00, against our letter of credit No. 4488, issued in their favor, for account of the Louisiana Bag Corporation, drafts to be accompanied by invoice, consular invoice, insurance certificate, free from particular or General average, ships delivery order and bill of lading evidencing shipment of 50 bales (100,000 yds.) 40" 10½ oz. Standard Calcutta Burlap in iron bound bales of 2000 yds. at 6½¢ per yd. CIF New York, for shipment from Calcutta during the month of November, 1920. Quality to be Standard Calcutta burlap and payment to be made on arrival and discharge of goods in New York.

Kindly note that draft is only to be paid on arrival and discharge of goods in New York. Credit to expire

February 8th, 1921. Kindly forward the documents to us when received.

Thanking you for your attention, we remain,

Yours very truly,

(signed) Royal R. Bastian,
Manager Foreign Dept."

RRB:GJB

I offer translation of cipher telegram of June 29th, 1920 with reference to the Carlos Alfert & Company transaction:

"Cipher Dated 6-29-20

From Whitney Central National Bank
New Orleans, La.

Charge our account, pay draft Carlos Alfert & Co New York / covering ninety five percent invoice cost 2000 bags cuban centrifugal sugar at 9½c cost and freight New Orleans / draft to be accompanied by invoice consular invoice negotiable blading evidencing shipment sugar at stated wire when paid.

HANOVER NATIONAL BANK,
New York, 6-30-20."

By Mr. Conboy:

Q553. In some of these communications that have been marked for identification or received in evidence, you have employed the term "agents" in the course of these communications, stating that you were acting merely as agents for the Whitney-Central National Bank; did you ever send copies of those communications or in any fashion communicate their contents to the Whitney Central National Bank? A. No sir, those letters are a form letter—

Mr. Stern: Just a moment. Now, if your Honor please, I object to that.

The Master: He has answered the question. If you want anything further, put another question.

Q554. Did you receive any communication from the Whitney-Central National Bank other than the communications that have been received in evidence with respect to these transactions? A. No sir.

JOHN F. TULLY, a witness called on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. Stern:

Q1. Where do you reside, Mr. Tully? A. 239 Harrison Street, Brooklyn, New York.

Q2. What is your occupation? A. Bookkeeper for the firm of J. S. Bache & Company.

Q3. What is the address of that firm? A. 42 Broadway.

Q4. That is where they have their offices? A. Their main office, 42 Broadway.

Q5. And that is where you are employed, at that main office? A. Yes sir.

Q6. That is New York City? A. New York City.

Q7. What is the business of J. S. Bache & Co.? A. Brokers.

By the Master:

Q8. Brokers of what kind? A. Do you mean stock securities? A. Stocks and commodities.

By Mr. Conboy:

Q9. They are members of the New York Stock Exchange? A. They are members of the New York Stock Exchange, the New York Cotton Exchange, the Chicago Board of Trade, the New York Produce Exchange, the New York Coffee Exchange—

The Master: That is sufficient.

By Mr. Stern:

Q10. You are the head bookkeeper of J. S. Bache & Co.? A. Yes sir.

Q11. Has the firm of J. S. Bache & Company an account on its books with the Whitney-Central National Bank of New Orleans? A. Well, we have a deposit account. At the present time that is the only account that is open.

Q12. Have you any account with the Whitney-Central National Bank in which the purchase or sale of securities for the account of that bank has taken place? A. It is not open at the present time. We did have an account open in January, 1921. I have a copy of the account here.

Q13. May I see it? A. Surely (document handed to counsel).

Q14. This account shows transactions had by the firm of J. S. Bache & Company for the account of the Whitney-

Central National Bank in connection with the purchase and sale of securities from January 13th to March 14th, 1921, does it not? A. That is right.

Q15. You have not with you a transcript of the account prior to January 13th, 1921, have you? A. I have, yes.

Q16. Can you state, from an examination of this account, what securities were purchased and what securities were sold by J. S. Bache & Company for the Whitney-Central National Bank beginning with January 13th, 1921? A. Shall I enumerate the different transactions?

Q17. Yes. A. On January 11th, 1921 we sold for account of the Whitney-Central National Bank the following:

\$ 300 worth of Liberty 4¼'s

650 Third Liberty 4½

50 Second Liberty 4¼

25,000 Third Liberty 4¼

30,000 Fourth Liberty 4¼

and on January 18th, we sold \$24,000 Victory 4¾'s and on March 14th, we sold \$60,000 Victory 4¾'s.

Q18. Now, these were Government securities which you sold for their account? A. They were Liberty Bonds, as we term them.

Q19. And the amounts which you have specified, are the face amount of the bonds? A. The face value of the bonds.

Q20. Did you deliver these bonds after you had sold them? A. We delivered them to the brokers to whom we sold them.

Q21. That is what I mean. Where did you get the bonds which you delivered? A. On January 13th, 1921, we received \$30,300 Fourth Liberty 4¼'s; \$25,650 Third Liberty 4¼'s and \$50 Second Liberty 4¼ from the Hanover National Bank against a payment to them of \$50,305.57.

On January 18th, we received \$24,000 Victory 4¾ from the Hanover National Bank against payment to them of \$23,388.70.

On March 14th, we received \$60,000 Victory 4¾ from the Hanover National Bank against a payment to them of \$59,049.88.

Q22. So that all of the securities which you testified were sold by you for the account of the Whitney-Central National Bank, you received from the Hanover National Bank? A. From the Hanover National Bank.

Q23. For the account of the Whitney-Central National Bank? A. Yes.

Q24. Had you previously been advised by the Whitney-Central National Bank to obtain delivery of these securities from

the Hanover National Bank? A. Yes, we have written communications to that effect.

Q25. Let me see them, please. A. (documents handed to counsel.)

Mr. Stern: I would like to read these into the record as follows:

"WHITNEY-CENTRAL NATIONAL BANK
of New Orleans.

New Orleans, January 7th, 1921.

Messrs. J. S. Bache & Co.,
42 Broadway, New York City, N. Y.

Gentlemen:

We have mailed today to the Hanover National Bank, New York City, by registered mail, insured under our policy, the following bonds:

\$10,000 Third Liberty Loan Bonds

\$10,000 Second Converted Liberty Loan Bonds

\$15,000 Fourth Liberty Loan Bonds

\$10,000 Victory Liberty Loan Bonds

with instructions, to deliver to you on payment of proceeds of same, and we beg to confirm our wire of date, requesting you to sell the above bonds in the open market.

Thanking you to give this matter your usual prompt attention, we remain,

Yours very truly,

(signed) N. E. Bertel
Asst. Cashier."

"WHITNEY-CENTRAL NATIONAL BANK

January 10th, 1921.

Messrs. J. S. Bache & Co.,
42 Broadway,
New York, N. Y.

Dear Sirs:

We beg to confirm our wire of even date, copy of which is enclosed herewith, ordering the sale of \$56,000. of Liberty Bonds and wish to advise that we are for-

warding same to the Hanover National Bank for delivery to you upon payment of proceeds of same.

Thanking you for your usual prompt and courteous attention, we beg to remain,

Yours very truly,

(signed) C. W. Kay,
Asst. Cashier."

"WHITNEY-CENTRAL NATIONAL BANK

January 15th, 1921.

Messrs. J. S. Bache & Co.,
42 Broadway,
New York City, N. Y.

Gentlemen:

Confirming our wire of date, requesting you to sell \$24,000 Victory 4¾ percent bonds at 97 or better, we would advise that we have today forwarded said bonds to the Hanover National Bank, your city, with instructions to deliver same to you upon payment of proceeds thereof.

Thanking you to give this matter your usual prompt attention, we remain,

Yours very truly,

(signed) Frank V. Moise,
Asst. Cashier."

"WHITNEY-CENTRAL NATIONAL BANK

March 11, 1921.

Messrs. J. S. Bache & Co.,
42 Broadway,
New York, N. Y.

Gentlemen:

We wired you today to sell \$60,000 Victory 4¾ percent bonds and have your reply that you have sold \$46,000 at 97.30 and \$14,000 at 97.32 and we are today forwarding these bonds to the Hanover National Bank with instructions to make delivery to you upon payment, and with the request that they wire us the

amount of proceeds placed to the credit of our account.

Thanking you for your attention, we are,

Yours very truly,

(signed) E. H. Keep,
Cashier."

Q26. Is there anything else you have? A. That is all.

Q27. How far back does this account with the Whitney-Central National Bank go? A. Well, that is the first transaction that appeared on our books.

Q28. It was opened then in 1919? A. 1919, yes.

Q29. In October? A. According to these drafts and letters you can see that the account really has been opened as the Whitney-Central Trust & Savings Bank, but due to bookkeeping error, the account was opened as the Whitney-Central National Bank.

Q30. You mean these entries in October? A. October, 1919.

Q31. You are not referring to the entries as to which you have testified in January 1921 to March, 1921? A. No, I do not refer to them.

Q32. So that the account of the Whitney-Central National Bank with Jules S. Bache & Company was first opened in January 13, 1921? A. Transactions with the Whitney-Central National Bank purchase or sales. We have had a deposit account with them.

Q33. But those transactions with the Whitney-Central National Bank, relating to the purchase and sale of securities for their account was opened January 13th, 1921? A. Right.

Q34. Have you got a transcript of the deposit account of J. S. Bache & Co. with the Whitney-Central National Bank? A. I have not; that was not called for.

Q35. By "deposit account" do you mean that the Whitney-Central National Bank of New Orleans has funds on deposit with J. S. Bache & Company or J. S. Bache & Company has funds on deposit with the Whitney-Central National Bank? A. J. S. Bache & Company has funds on deposit with the Whitney-Central Bank.

Q36. And that is all you have reference to in regard to this deposit account? A. That is all.

Q37. And has J. S. Bache & Company an office in New Orleans? A. No, we have not.

Q38. And that deposit account is what is generally known as a banking account? A. A banking account.

Q39. On which checks are drawn by J. S. Bache & Company? A. Yes.

Q40. And delivered to various parties in payment of obligations of J. S. Bache & Company? A. Yes.

Cross Examination by Mr. Conboy:

Q41. Mr. Tully, I understand the extent of the transactions outside of this deposit account that you testified to between the Whitney-Central National Bank and J. S. Bache & Company are those which you referred to as having taken place between January 13th, 1921 and the 14th day of March, 1921, is that correct? A. Yes sir.

XQ42. And the transactions consisted of the sale by J. S. Bache & Company of these specific Liberty Bonds that you have referred to? A. Yes, sir.

XQ43. Pursuant to directions you received by wire in the first instance and subsequently confirmed by these letters that have been put in evidence here? A. Yes.

XQ44. And those transactions began on the 13th of January and terminated on the 14th day of March, 1921? A. Yes, sir.

Adjourned to Tuesday, May 31, 1921, at 2:00 P.M.

Adjourned to June 9, 1921.

Adjourned to Wednesday, June 22, 1921, at 10:30 A.M.

New York, June 22, 1921.
10:30 A. M.

Met pursuant to adjournment.

PRESENT: The Special Master,

Mr. Stern,

Mr. Smythe,

Mr. Conboy.

EDWIN A. KENZEL, called as a witness in behalf of the Plaintiff, being duly sworn, testifies as follows:

Direct Examination by Mr. Stern:

Q1. What is your address, Mr. Kenzel? A. 15 Nassau Street, New York.

Q2. What is your occupation? A. Deputy Governor, Federal Reserve Bank.

Q3. Of New York? A. Yes.

Q4. Are you also Controller of Investments for the Federal Reserve Bank of New York? A. Yes.

Q5. And the Federal Reserve Bank has its place of business where? A. 15 Nassau Street.

Q6. In New York City? A. New York City, yes, sir.

Q7. And you were such Deputy Governor and Controller of Investments of that Bank on the 13th of April, 1921, were you not? A. Yes.

Q8. What are your duties, if any, Mr. Kenzel, as such Deputy Governor and Controller of Investments with respect to the purchase of bank acceptances? A. It is all done under my direction. I have general supervision of the entire investment policy of the Bank.

Q9. The Federal Reserve Bank of New York purchases bank acceptances, does it not? A. Yes.

Q10. And such acceptances are offered to it for purchase by various note brokers and others engaged in the business of selling bank paper? A. Not note brokers; but so-called discount houses who deal in bankers' bills, and also by banks.

Q11. And the Federal Reserve Bank of New York was engaged in that business on April 13, 1921, was it not? A. Yes, it was.

Q12. Now, on that date did you have a conversation with Mr. John E. Bouden, Jr., President of the Whitney-Central National Bank of New Orleans? A. Yes.

Q13. Where did you see Mr. Bouden? A. I saw him in my office at the Bank.

Q14. In the Federal Reserve Bank of New York? A. Yes.

Q15. At 15 Nassau Street? A. Yes.

By the Master:

Q16. What year was this? A. 1921.

By Mr. Stern:

Q17. Will you please state as fully as you can, and as nearly as you can recollect, the subject of that conversation, everything which was said by Mr. Bouden and everything that was said by you on that occasion?

Mr. Conboy: May I have an objection, your Honor, to the materiality and relevancy of this testimony?

The Master: Objection overruled; exception.

A. I do not know that I can state fully everything that was said.

Q18. The substances of what was said. A. Mr. Bouden called, and we had a chat for an hour or so and discussed a good many things, such as the business conditions of New Orleans, his bank, the branch of the Federal Reserve Bank at New Orleans, but more particularly he called to discuss with me the status of the bills of the Whitney-Central National Bank in this market, which he felt had been adversely affected as a result of this controversy between the Bank of America and his Bank, and he wished to assure me, to express his assurance to me, that their action in declining to pay such drafts was justified, and he wished me to be convinced of that fact. That was the sum and substance of the entire interview.

Q19. Did he state that that was why he had come to see you? A. That was why he came to see me. I do not recall that he stated that he had come to see me particularly about that, but it was the reason, and his interview had been arranged in advance by mutual friends.

Q20. And he did state to you these various things that you have testified to? A. Yes.

Q21. You testified that he said that he had particularly wanted to see you about this matter of the position of their bills here in the New York market.

The Master: He did not say that as you put it.

Q22. Just repeat what you said, please; I do not recall the exact words you used.

(Answer to Q18 read).

Q23. Now, did he say why he wished you to be convinced of that fact or anything in regard to that? A. Yes. I explained to him, or rather, he mentioned the adverse effect on his bills if the Federal Reserve Bank of New York would not purchase them or discount them. I explained to him that the Federal Reserve Bank of New York was never the primary purchaser of bills; they only took such as had gone through the market, that is, those which had been first purchased by some one else, and a banking endorsement added, and then they might be offered to us. We confine ourselves to this sort of paper. I explained to him that probably it was the outside market more than the Federal Reserve Bank of New York, which would reflect any marked attitude toward his paper. Then he said, "But you are the one man in New York who has an understanding of this thing, and can correct any ad-

verse market condition, because of your position here in the Bank, and the position which the Bank occupies toward the market."

Q24. Was anything said about the correspondents of the Whitney-Central National Bank in New York, and if so, what? A. Yes, we chatted these things over, and I asked him if he discussed this matter at all with his correspondents. He said no, that he had not specifically, or in detail. I suggested possibly it might be a good thing for him to do that. He thought it over and decided that it would also; one in particular he indicated he was going to see.

Q25. These different correspondent banks in New York? A. Yes.

Q26. This conversation as to which you have testified with Mr. Bouden was the only conversation which you had with him on that day, was it not? A. Yes, sir.

Cross Examination by Mr. Conboy:

XQ27. Mr. Kenzel, what is the relationship between the Federal Reserve Bank of New York, and the other Federal Reserve Banks throughout the country; is there any connection between them? A. Yes.

XQ28. What is the nature of that connection; I presume it is all a matter of Statute Law is it not? A. Largely, and operation.

XQ29. Under the Treasury Department? A. No, under the Federal Reserve Act; under the supervision of the Federal Reserve Board.

XQ30. Now, can you give us briefly a statement of just what that is? A. The law provides that there shall be not more than twelve Federal Reserve Banks in districts laid out geographically in accordance with the law.

XQ31. May I interrupt you there to say the entire United States is divided into twelve Federal Reserve Districts, with a Federal Reserve Bank in each District? A. Yes, there are twelve Federal Reserve Districts with a Federal Reserve Bank in each District. However, they are separate, independent unities in their own operation, excepting that they have intra-banking operations between Federal Reserve Banks, which is governed to a certain extent—to a certain definite limited extent by the law at the direction or supervision of the Federal Reserve Board. They are co-ordinate, while they are separate units. They are co-ordinated through the Federal Reserve Board. There are three directors of each Bank appointed by

the Governor to represent the Government; one of those directors in each bank holds the direct and resident representative of the Federal Reserve Board at the Bank, he is called the Federal Reserve Agent of the Bank; he is also Chairman of the Board of Directors of the local Bank.

The system is further co-ordinated as to matters of policy, acting through an advisory council, one for each Bank, which meets quarterly at Washington with the Federal Reserve Board and discusses business conditions and makes recommendations to the Board. They are not officers of the Bank excepting in that capacity; they are elected by the Directors of the Banks as their representative on this Advisory Council. All of the Banks operate under regulations prescribed by the Board, as provided in the Statutes, which are published, and which, of course, guide all of the Banks as to the classes of paper which are eligible and similar questions, which pertain to the whole system. Also, there are periodical meetings in Washington and in the various Reserve cities of the Governors of the respective Banks, where they discuss also Federal Reserve matters; there are also meetings of the Federal Reserve agents where matters of system are discussed, and the policy of the Bank. So in that way there is a very complete co-ordination of the system, making it a number of independent entities brought about in the manner which I have described.

XQ32. Had the Federal Reserve Bank of New York been refusing to take the acceptances of the Whitney-Central National Bank of New Orleans prior to this conversation? A. I would not say they had been refusing to take them. May I answer your question by describing our practice?

XQ33. If it best answers the question, I suppose you would better do that. A. The practice and policy of the Bank is not to seek bills in the market or to bid for bills excepting under certain conditions where a bid might be requested for the purchase of specified bills upon their arrival from a foreign country. We do bid under those conditions, but not otherwise. In our ordinary day to day practice, we have bills offered to us at rates, and we either accept or decline the offer.

By the Master:

Q34. The offer on the bills names the rate? A. Yes.

Q35. And then you decide whether you will take it or not? A. It gives the name, amount, maturity, rate and other information that is volunteered or which we might ask with respect to it, and then we either accept or decline.

By Mr. Conboy:

XQ36. What I am endeavoring to get at, Mr. Kenzel, is this: There must have been, from your conversation with Mr. Bouden, some attitude of antagonism for the non-acceptance or quasi refusal of the acceptances of the Whitney-Central National Bank; is that a fact? A. You ask me in respect to antagonism, or do you ask about the fact as to whether we had declined some of the bills?

XQ37. Whether you had declined some of the bills? A. We had declined some of the bills.

XQ38. And that declination to take such acceptances had taken place before the 13th of April, 1921, had it not? A. Yes.

XQ39. You have told us that such acceptances as are presented to you for purchase bear the endorsement or name of more than the original bank issuing the acceptances? A. Yes, always.

XQ40. In this instance what other names appeared upon that paper? A. I cannot recall.

XQ41. Of course, you cannot recall, but in some fashion your attitude with respect to that had been communicated to some one, Mr. Kenzel, with respect to that paper? A. I do not think so.

By the Master:

Q42. Of course, it had been communicated to the man from whom you refused to accept it? A. Of course, with reference to that paper.

By Mr. Conboy:

XQ43. Had you known prior to this conversation that there had been a controversy between the Bank of America and the Whitney-Central National Bank? A. Oh, yes.

XQ44. How did you get that information? A. I got it from the Bank of America in the first instance.

XQ45. The Bank of America had communicated with you that there was a pending controversy between it and the Whitney-Central National Bank with regard to the refusal of the Whitney-Central National Bank to honor certain acceptances or certain drafts? A. Certain drafts.

XQ46. And that information was communicated to you for some purpose, was it not? A. Undoubtedly.

XQ47. And the purpose for which it was communicated to you was to have the Federal Reserve Bank refuse to take the

acceptances of the Whitney-Central National Bank? A. No, sir.

Mr. Stern: Just a moment; I object to the question.

The Master: That calls for the mental processes of a third party.

Mr. Conboy: Perhaps it does.

XQ48. Was any statement made to you, Mr. Kenzel, at the time this information was transmitted to you from the Bank of America as to what your attitude should be as to the acceptances of the Whitney-Central National Bank paper? A. Do you mean by the Bank of America?

XQ49. By the Bank of America or any one else in its behalf? A. No, sir.

XQ50. How was the information communicated to you, in a letter or orally? A. Orally.

XQ51. And by whom? A. By various officers of the Bank.

XQ52. You mean the Bank of America? A. Yes.

XQ53. Now, following the receipt of that information from the Bank of America, you declined to take the acceptances of the Whitney-Central National Bank, did you? A. After some time; do you wish me to state more fully?

XQ54. You have answered the question.

Mr. Stern: I would like to have him state more fully in order to save me asking the question on cross examination.

Mr. Conboy: I have no objection.

A. As a result of the disclosures made to me by the Bank of America, I caused inquiries to be made through appropriate channels with respect to the whole controversy, and it was as the result of those inquiries which determined my future action.

By Mr. Conboy:

XQ55. The Bank of America, in the fashion you have indicated, transmitted this information to you, then following upon that you instituted these inquiries you speak of, and upon the information that you have obtained, as the result of these inquiries, you took the action which you have described as refusing acceptances of the Whitney National Bank? A. Yes, sir.

XQ56. Did you know that a suit was pending in New Orleans between the Bank of America and the Whitney-Central National Bank, instituted by the Bank of America? A. At what time?

The Master: At the time of this interview.

XQ57. At the time of this interview, April 13, 1921? A. Oh, yes.

XQ58. You spoke of the fact that the interview had been arranged by a mutual friend. Am I correct in stating your testimony in that respect, Mr. Kenzel? A. Yes.

XQ59. Who is that mutual friend, Mr. Kenzel? A. Mr. Alexander, President of the National Bank of Commerce.

XQ60. Did Mr. Alexander give Mr. Bouden any form of introduction to you? A. Yes.

XQ61. Did you have a conversation with Mr. Alexander respecting the proposed visit of Mr. Bouden? A. Yes.

XQ62. And is it not a fact that Mr. Alexander told you that Mr. Bouden had called upon him, and that he had suggested to Mr. Bouden that he come around to see you?

Mr. Stern: I object to that as incompetent, irrelevant and immaterial.

The Master: I will overrule the objection, and you may have an exception.

A. I do not recall it in that way. The fact as I recall it was, that Mr. Alexander came to us and said that Mr. Bouden was in New York, and that he wanted to have a chat with us about this matter, and asked if it would be agreeable that he should. I told him yes. After a day or so Mr. Bouden came in with a card of introduction from Mr. Alexander.

XQ63. And it is a fact, is it not, that Mr. Alexander actually brought Mr. Bouden in to see you? A. I do not think so, although he may have, because at the time Mr. Bouden called, I was in a conference in another room. Word was brought to me that Mr. Bouden was there. When I came out to see him, Mr. Alexander was not present, but Mr. Bouden was there with a card of introduction.

XQ64. You do not recall that Mr. Alexander had been at the Federal Reserve Bank that morning and saw Mr. Bouden outside your door or room when he came out from the meeting that he was attending and brought Mr. Bouden in to see you? A. I do not recall that.

XQ65. Mr. Alexander is connected in some fashion with the Federal Reserve Bank of New York, is he not? A. He is a director of the Federal Reserve Bank of New York.

XQ66. And Mr. Alexander was familiar with the attitude of the Federal Reserve Bank of New York toward the Whitney-Central National Bank acceptances, was he not? A. I believe not.

XQ67. You say you believe not? A. Yes, sir; in fact, he told me that he himself knew nothing of this whole matter.

XQ68. Mr. Alexander told you that he himself knew nothing of the whole matter? A. Yes, until Mr. Bouden discussed it with him, preliminary to making this arrangement to come to see us; that was his first intimation of it.

XQ69. He knew nothing at all of the attitude of the Federal Reserve Bank regarding the acceptances of the Whitney-Central National Bank's paper; did you understand Mr. Alexander to say that to you? A. Until he learned it by inquiry from us.

XQ70. When did he learn it by inquiry from you? A. A day or so before Mr. Bouden came in; that day or the day before; it was about that time.

XQ71. That would be about the time of his interview with Mr. Bouden? A. It was.

XQ72. Mr. Alexander's interview with Mr. Bouden, I mean. A. Mr. Bouden's visit to New York.

XQ73. Is the Federal Reserve Bank a large purchaser of Bank acceptances? A. At times.

XQ74. And I take it that the attitude of the Federal Reserve Bank of New York toward acceptances of out of town banks would be communicated or transmitted to other Federal Reserve Banks in the course of time, would it not? A. Hardly; the procedure more often is that the other Federal Reserve Banks communicate with us regarding the status of their own members and advise what position to take in dealing with their bills in the market intelligently.

XQ75. There is some system of intercommunication on this subject, is there not? A. Why, yes, there is correspondence and exchange of views on anything that comes up.

XQ76. You do not know, I think you said, whose name was upon this paper, in addition to the name of the Whitney-Central National Bank? A. That paper which we declined to purchase? No, sir, I do not.

XQ77. The paper was not offered to you by the Whitney-Central National Bank, was it? A. No.

XQ78. Does the Federal Reserve Bank itself have offers outside of its own district. You do not restrict the purchasers of acceptances strictly to banks in the New York District? A. Do you mean banks physically located here in New York City?

XQ79. Banks physically located here? A. No.

XQ80. You buy the paper of Banks all over the United States, do you not; that is, banks in every part of the country? A. In all parts of the country where the institutions are well known.

Re-Direct Examination by Mr. Stern:

RDQ81. And that paper that you have testified concerning was offered to the Federal Reserve Bank of New York in New York City, was it not? A. Yes.

RDQ82. And where it is purchased, it is purchased here in New York City? A. In New York.

EDWARD W. RUSSELL, a witness called in behalf of the Plaintiff, being duly sworn, testifies as follows:

Direct Examination by Mr. Stern:

Q1. What is your address, Mr. Russell? A. 46 Wall Street.

Q2. New York City? A. New York City.

Q3. What is your occupation? A. Assistant Cashier.

Q4. Of what? A. The Bank of America.

Q5. Which has its principal office where? A. At 46 Wall Street.

Q6. 46 Wall Street, New York City? A. Yes.

Q7. Do you know Mr. John E. Bouden, Jr., President of the Whitney-Central National Bank of New Orleans? A. I do.

Q8. Did you know him prior to April 13, 1921? A. Yes, sir.

Q9. You had met him at New Orleans? A. Yes, sir.

Q10. Several months prior to that time? A. Yes.

Q11. And had seen him on several occasions, had you not? A. I had a number of conferences with him, running over a period of several days.

Q12. Where were those conferences held? A. In Mr. Bouden's personal office.

Q13. Where was that personal office? A. In the Whitney-Central National Bank in New Orleans.

Q14. Now, did you see Mr. John E. Bouden in New York City on April 13, 1921? A. Yes, sir.

Q15. Where did you see him? A. At the Federal Reserve Bank of New York.

Q16. And what is that address; I mean the address of that Bank? A. 15 Nassau Street.

Q17. Was anyone with you at the time you saw Mr. Bouden at that time? A. Yes, sir, Mr. Corcoran.

Q18. Who is Mr. Corcoran? A. Mr. Corcoran is in the employ of Rushmore, Bisbee & Stern.

Q19. What was Mr. Bouden doing when you saw him in that Bank? A. He was talking with Mr. Kenzel, Deputy Governor.

Q20. Mr. Kenzel who is the same man who just testified in this proceeding? A. Yes.

Q21. Where was Mr. Kenzel at that time? A. He was sitting at his own desk.

Q22. How long, approximately, was Mr. Bouden in conversation with Mr. Kenzel at that time? A. Approximately an hour.

Q23. Was Mr. Corcoran with you all that time? A. All that time.

Q24. When Mr. Bouden left the Federal Reserve Bank of New York, did you and Mr. Corcoran follow him? A. We did.

Q25. What did Mr. Corcoran do and where? A. Mr. Corcoran, after I had identified Mr. Bouden, Jr., to him, went up to Mr. Bouden and served him with three various papers at the corner of Nassau Street and Pine, right outside of the building.

Q26. In New York City? A. Yes.

Q27. That was within five minutes or so after he had left Kenzel? A. Just long enough to leave Mr. Kenzel's bank and walk to the corner.

Q28. That is about half a block or a block? A. It would not be that far; it would be about a quarter of a block.

Q29. A quarter of a block from the Federal Reserve Bank? A. Yes.

Mr. Stern: Do you want me to put Corcoran on the stand to corroborate this and identify the papers in question?

Mr. Conboy: I think you are putting in testimony on a matter that is not disputed.

WILLIAM ARTHUR SUYDAM, recalled.

Direct Examination by Mr. Stern:

Mr. Stern: I have here, Mr. Conboy, photostatic copies of six letters from the Whitney-Central National Bank,

to the Hanover National Bank, which were furnished me by Mr. Suydam, referring to matters which were touched upon in his testimony, and I should like to offer them in evidence.

Mr. Conboy: I desire to make the same objection I made before regarding their competency and relevancy.

The Master: Objection overruled; exception.

The Master: It would be better, perhaps to copy these letters into the record without giving them an exhibit number.

The photostatic copies of the six letters referred to are as follows:

“New Orleans, La.,

February 17, 1921.

Hanover National Bank,
Securities Department,
New York, N. Y.

Dear Sirs:

We hold your letter of March 22, 1920, advising that you have on hand for our account sundry securities deposited on February 18, 1918 by Messrs. Brannel Parker and Company. So far as we are advised there has been no change in these securities, but the Bank Examiner criticises us for the date of the letter, and we would therefore appreciate your furnishing us with a new list as of the correct date.

Thanking you for your usual courteous attention we beg to remain,

Yours very truly,

W. B. Allison, Asst. Cashier.

“New Orleans, La., March 2, 1921.

Hanover National Bank,
New York City.

Dear Sirs:

We have your telegram of date advising that you are crediting our account \$250,000.00 deposited by Guar-

anty Trust Co., in Federal Reserve Bank Funds value to-day for account of Anderson Clayton & Co., and we have made the necessary entries to conform.

Yours very truly,

E. E. Leovy,
A/Cashier."

"New Orleans, La., March 3rd, 1921.

Hanover National Bank,
Foreign Dept.,
New York, N. Y.

Dear Sirs:

A good customer of ours, desirous to remit \$240.00 in dollars, by cable, to Francesco Zito, Madonia, Palermo, Italy, account Tajague.

Presuming that you have a dollar account on your books for your Italian correspondent that would enable you to handle the transaction, we request that you kindly make the above remittance by cable to the debit of our account under advice to us.

Thanking you for your attention and awaiting your advice, we remain,

Yours very truly,

R. R. Bastian.
Manager Foreign Dept."

"New Orleans, La., March 11th, 1921.

REGISTERED INSURED.

Hanover National Bank,
New York, N. Y

Dear Sirs:

We are sending you under separate cover by registered mail insured \$60,000.00 of Victory 4¾% Liberty Loan Bonds with June 1921 and subsequent coupons attached in the following demoniations:

A.	119962 to A.	119981 inclusive for \$	500.00 each
H.	1671661 "	H. 1671685	" " 1000.00 "
J.	102685 "	J. 102699	" " 5000.00 "

These bonds have been sold for our account by J. S. Bache & Company, and we will thank you to make delivery to them upon payment of \$46,000.00 at 97.30 and \$14,000.00 at 97.32 less their commission.

Upon receipt of the proceeds, please advise us by wire the amount placed to the credit of our account.

Thanking you for your attention, we are,

Yours very truly,

E. H. Keep,
Asst. Cashier."

"New Orleans, La., April 2, 1921.

Hanover National Bank,
New York City.

Dear Sirs:

We have your telegram of to-day advising that you have credited our account \$10,000.00 deposited by J. S. Bache & Co., for account of Charles Godchaux.

Yours very truly,

W. B. Allison,
A/Cashier."

"New Orleans, La., April 15th, 1921.

REGISTERED.

Hanover National Bank,
New York, N. Y.

Dear Sir:

We beg to hand you herein temporary certificate of the Carson Petroleum Company covering 2800 shares of their stock, being certificates Nos. 1707 to 1714 inclusive, and 1817 to 1836 inclusive, for 100 shares each, and we would thank you to have these exchanged for permanent stock certificates of 100 shares each in the name of *Chas. E. Smith*, and return same to us with memorandum of any cost in the matter.

Thanking you for your attention, we are,

Yours very truly,

N. E. Bertel,
Asst. Cashier.

P.S. The address of Mr. Chas. E. Smith, is 1026 Whitney Bldg., New Orleans, La."

Q554. Mr. Suydam, in looking over your testimony that you gave in the other hearing, with reference to the practice of the Hanover Bank in connection with collecting items sent you by the Whitney-Central National Bank, I was left in a little doubt as to whether in all cases, both of cash items and time items, you credited the account of the Whitney-Central National Bank with the amount of the item immediately upon its receipt and before collection, or whether that was your practice only in connection with cash items. Will you explain your procedure? A. It is customary for us to receive remittance letters of our several depositors, one of which was the Whitney-Central National Bank of New Orleans, and all letters containing cash items which are payable through the New York Clearing House, or what is known as cash checks, are immediately credited to the account of the Whitney-Central National Bank of New Orleans on our books. They are put through the respective sources of collection, and if unpaid, charged back to the account when returned to us; otherwise, they become part of the balance of the Whitney-National Bank of New Orleans on our books.

By the Master:

Q555. Now, as to the time items? A. As to time items, the custom as to collection of those items is as follows. They are received in our Collection Department and are placed on our records and are presented at their maturity dates to the parties on whom they are drawn, and are then immediately credited to the deposit account of the Whitney-Central National Bank.

Q556. If paid? A. If paid.

Q557. And how if they are unpaid? A. If unpaid they are returned to the Whitney-Central National Bank of New Orleans, giving the reason of non-payment.

Q558. By cash items I believe you explained you meant checks and drafts payable on demand? A. Checks and drafts payable on demand and at sight.

Q559. Was it the custom for the Whitney-Central National Bank to put some form of endorsement on those cash items? A. The Whitney-Central National Bank put the ordinary and regular collection endorsement, which is the endorsement which every bank puts on items for collection.

Q560. What does it state? I am referring to the Whitney-Central National Bank. A. I do not remember the exact wording of their endorsement; it probably says, "Pay any bank or banker for collection for credit of our account."

Q561. Did the Whitney-Central National Bank in some form or other say, "Pay for collection"? A. As a rule. I do not remember exactly the status, as I said before, of the Whitney-Central National Bank's stamp, as I do not come in close touch with it every day in the week, but the majority of cases say "For collection".

Q562. I understood from you, although I am not certain, that the Whitney-Central National Bank did say "For collection"? A. I am not certain. I do not examine Whitney-Central National Banks every day.

Q563. That, I suppose, you could verify? A. I could verify it in a few minutes.

The Master: Suppose we leave a space at this point in the record for a copy of the Whitney-Central National Bank's stamp to be placed by Mr. Suydam.

By Mr. Smythe:

Q564. That form of endorsement is both on the cash item and time items? A. To the best of my knowledge.

Q565. You say when you get a time item, a separate entry is made on some book. What book is that? A. That goes in the Collection Clerk's Department, and the entry is made. We have a slip; it is not a book exactly. It is a loose leaf record of charges and credits. They are tickets put in together; that is the method followed by all banks.

IT IS AGREED That if Robert E. J. Corcoran, employed by Rushmore, Bisbee & Stern, mentioned in Mr. Russell's testimony, if present, would testify that the three pieces of paper which Mr. Russell testified he saw him hand to Mr. John E. Bouden, Jr., were the summonses in these three actions.

Adjourned to July 22, 1921 at 10.00 o'clock A.M.

New York, July 22, 1921.

Met pursuant to adjournment.

PRESENT: The Special Master,
Mr. Stern,
Mr. Smythe,
Mr. Conboy.

Mr. Stern: I move to strike out as irrelevant and immaterial, all the answers of the witness Suydam, with regard to the business transacted by the Hanover National Bank with non-New York banks, other than the defendant Bank having deposit accounts with the Hanover National Bank, and particularly said witness' answers to Q's 544, 545, 546, 547 and 548.

The Master: Motion denied. Exception.

(e)

Thereupon and on the 29th day of July, 1921, E. Henry Lacombe as Special Master as aforesaid, duly filed with his report, hereinafter mentioned, the aforesaid testimony and record of proceedings had before him, under the said order last mentioned, which said testimony and record of proceedings had before him were embodied in the stenographer's minutes referred to in his said report, and on said day said E. Henry Lacombe as Special Master as aforesaid duly filed said report dated on said day which is entitled in this action and omitting said title, is as follows:

"I, E. Henry Lacombe, appointed Special Master by order of this Court, dated April 29, 1921, to take proofs upon the questions arising upon motion to set aside and declare null and void the service of the summons herein, and to report the same, with my findings thereon do hereby respectfully report as follows:

Hearings began on May 23, 1921, and the following appearances were noted:

RUSHMORE, BISBEE & STERN,
Solicitors for plaintiff.

HENRY ROOT STERN,
Of Counsel.

GRIGGS, BALDWIN & BALDWIN,
Solicitors for defendant.

MARTIN CONBOY and J. BLANC MONROE,
Of Counsel.

"On that day and on succeeding days testimony was taken and the cause was finally submitted on briefs and arguments on July 22, 1921.

"There appear to be two other causes, in each of which a similar motion was made, but only the order in Action No. 1 has been filed with me. This report is concerned therefore with that action, but presumably all proceedings had herein will be stipulated into the other two actions.

"The plaintiff is a Banking Corporation organized under the laws of the State of New York. Defendant is a corporation organized under the National Banking Law, located in the City of New Orleans, Louisiana, where it has its bank, principal office and place of business.

"The summons was served April 13, 1921, in the City of New York on defendant's president—Mr. Bouden, who was in this city at that time. The motion to set aside such service was made, as stated in defendant's brief on the grounds that:

'The defendant has never been located or had an office or place of business elsewhere than in New Orleans; that the defendant has never been authorized to do business within the State of New York and has never applied for permission to do business in the State of New York and has never maintained an office or agent for the transaction of any business in the State of New York and that the defendant is not now and was not at any time doing business in the State of New York.'

"The transactions as to which testimony was taken, which took place here and which, it is contended, show that the defendant was doing business here, were conducted by the Hanover National Bank of New York, which is a correspondent bank of defendant. It was stipulated that similar testimony could be elicited from the proper officers of five other banks in the City of New York, except that the transactions or course of conduct between the defendant and those five banks was less in volume than with the Hanover National Bank and that such transactions or course of conduct with those five banks did not involve letters of credit or drafts payable under letters of credit.

"Examination of the multitude of decisions in the federal courts on this question of a corporation 'doing business' in a state other than that of its domicile includes concurrence with the statement of Judge Bledsoe in *Knapp v. Bulloch Tractor Co.*, 342 Fed., 549 that: 'No really satisfactory, comprehensive and scientifically accurate determination of what is necessary or may be sufficient to constitute "doing business" in a state has been encountered.' The U. S. Supreme Court apparently

thinks it unwise to undertake to formulate any such determination; in several decisions it repeats the statement in *St. Louis, S. W. Ry. v. Alexander*, 227 U. S., 218, that the court should decide each case upon the facts brought before it. Three deliverances of the same court throw some light upon the question. In the one last cited it is said:

'In a general way, it may be said that the business must be such in character and extent as to warrant the inference that the corporation had subjected itself to the jurisdiction and laws of the district in which it is served.'

'In *International Harvester Co. v. Kentucky*, 234 U. S., 579, the court said:

'We are satisfied that the presence of a corporation within a state necessary to the service of process is shown when it appears that the corporation is there carrying on business in such sense as to manifest its presence within the State.'

'In *Phil. & Reading Ry. Co. v. McKibbin*, 234 N. Y., 264, it said:

'A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and such extent as to warrant the inference that it is present there.'

This is not a removed cause. In *Green v. C. B. & Q. Ry. Co.*, 205 N. S., 530, the Court, referring to two cited decisions, in which jurisdiction was upheld, said: 'The facts in those cases are similar to those in the present case. But in both cases the action was brought in the state courts and the question was of the interpretation of a state statute and the jurisdiction of the state courts.'

'As to the physical service of the summons on the president of the defendant there is no dispute. He came to New York apparently to interview the deputy governor of the Federal Reserve Bank here as to some discrimination against rediscount of defendant's paper. The only testimony is that of the deputy governor and it is very brief. It is not here discussed for the reason that, if the other testimony does not support a finding that defendant bank was doing business here, the defendant's visit for such purpose would not be sufficient, under the decisions in this circuit, to sustain jurisdiction. *Wilkins v. Q. C. Savings Bank*, 154 Fed., 173; *Noel Construction Co. v. Smith Co.*, 193 Fed., 492. If on the other hand the conclusion is reached that defendant was doing business here, it makes

no difference for what purpose its president came to New York.

"Plaintiff calls attention to the language of the order which provides that 'the *questions of fact* arising upon said motion are referred to * * * the Special Master to take proofs thereon and report the same with his findings *thereon*.' As some point is made of this, special effort will be made to confine this report to findings on the questions of fact; but the phrase "doing business" has been so frequently considered in the federal courts and has been given so many different meanings that it will not be always easy to avoid some reference to these authorities, although they will not be discussed. It is, of course, understood that a Special Master in the federal courts does not, like a referee to whom all issues are sent by a state court, undertake to decide the questions of law involved.

"Taking up now the transactions of the Hanover Bank for account of its correspondent, we find the following.

"The Whitney Central has a deposit account with the Hanover, and sends it from time to time cheques, coupons or other items which it has for collection in New York and vicinity, endorsed (when necessary) for collections. These are presented by the Hanover to the proper places, all amounts collected thereon are deposited in the account, and uncollected items are returned to defendant at New Orleans with a statement of the reason for non-payment.

"The defendant draws checks or drafts from time to time over the signatures of defendant's officers, which are paid by the Hanover. Sometimes it sends telegrams instructing the Hanover to pay stated sums to designated persons in this vicinity. Sometimes it sends instructions by mail or telegram to pay to the Federal Reserve Bank for transmission through the Federal Reserve System to a Federal Reserve Bank in some other city and to debit defendant's account with the amount so paid. Sometimes defendant accepts time bills in New Orleans payable at a future date here, which bills are presented to the Hanover, either through the Clearing House or at the counter for certification and thereupon debit entry is made in the account.

"Sometimes the Hanover is instructed by defendant to receive from persons in New York securities and to pay for them, debiting the account with the amount paid.

"Sometimes it receives instructions to honor certain specified checks drawn upon the Whitney Central Bank of New Orleans, which it does, charging the same to the account.

"At times defendant has borrowed money from the Hanover—there was such a loan outstanding when testimony was being taken. These loans are evidenced by notes executed in New Orleans by the president and cashier of defendant and mailed to the Hanover. They are secured by collateral located in New Orleans, ear-marked and set aside as collateral for such notes and kept in New Orleans.

"The defendant has at times shipped currency to the Hanover but not of recent years. Presumably, the Federal Reserve System eliminates the necessity for such shipments.

"There is with the Hanover Bank a special deposit of certain securities in the name of a customer of the defendant, which is held subject to the instructions of defendant.

"The Hanover receives from other persons or banks deposits for the credit of defendant for the use of a third party. Thus Mitsui & Co. deposited with it \$50,000, requesting that it be placed to the credit of defendant's deposit account, by order of the Southern Products Co. of Dallas, Texas. These instructions were communicated to defendant.

"The Hanover buys from and sells foreign exchange to the defendant. The method in the case of sales of foreign exchange by the defendant is as follows: The defendant wires the Hanover National Bank requesting it to make a bid on the defendant's draft issued in New Orleans by the defendant drawn on a London or other foreign bank or on bills endorsed by the defendant bank and drawn on foreign countries and in the event of the acceptance by the defendant of the bid of the Hanover National Bank defendant telegraphs to New York accepting such bid and forwards by mail a draft drawn on the appropriate foreign bank (or endorsed) to the order of the Hanover National Bank and the Hanover National Bank endorses the draft and forwards it to the Hanover Bank's foreign correspondent for the credit of the Hanover National Bank.

"Sales of foreign exchange by the Hanover National Bank to the defendant are made in the following manner. The defendant wires from New Orleans to the Hanover National Bank inquiring at what rate the Hanover Bank will sell a certain amount of exchange on London, Paris or other foreign country. The Hanover National Bank thereupon wires to the defendant offering the amount of exchange required at a certain rate. If this rate is satisfactory to the defendant the defendant by telegram accepts and requests the Hanover Bank to remit or cable the amount involved to the defendant's foreign correspondent for the credit of the defendant and directs the Han-

over Bank to charge defendant's deposit account with the purchase price of the draft. The witness recalled three instances in which the Hanover purchased from defendant drafts upon foreign banks which bore defendant's endorsement; the drafts were received by mail.

"Bank acceptances are negotiable drafts drawn usually at sixty or ninety days issued by a bank in one place on another bank in some other city of the United States. The bank upon which the draft is drawn upon presentation accepts it, takes from it any documents which may be attached, and returns the draft to the presenting bank, which negotiates or keeps it. In no instance has the Hanover Bank sold to anyone bank acceptances of the defendant nor did it ever purchase bank acceptance for others for the account of defendant.

"Sundry minor transactions appearing on the ledger sheets of the Hanover National Bank were referred to in the testimony. One instance was the payment by the Hanover National Bank to the Equitable Trust Company of \$3.31 to cover tax stamps which had been overlooked on some acceptances. Another debit item resulted from the payment by the Hanover National Bank to the Tax Collector of the State of Pennsylvania on account of the stock transfer tax on ten shares of Gulf Oil Corporation. In another instance \$20. was paid by the Hanover Bank on account of stock transfer taxes on 2,000 shares of Carson P. Co., and in still another case the Hanover National Bank paid and debited to the defendant the sum of \$1,000. to a Mr. V. P. Stokes. All of these payments were made by the Hanover National Bank on express instructions received pursuant to the regular custom of banks by mail or telegraph from the defendant in New Orleans.

"The Vice-President of the Hanover testified to an instance in which the defendant performed in New Orleans the same kind of service for the Hanover National Bank in New York. A credit of \$1,000 was given to the defendant by the Hanover National Bank to cover a request made by the Hanover National Bank of the defendant to pay that amount to Mrs. F. M. Montague by order of Lloyd's Bank, Ltd., London.

"No drafts drawn by third parties upon the Whitney Central National Bank were ever paid by the Hanover National Bank.

"In some instances, one of which is referred to in the record as the Fontes draft, the defendant upon presentation in New Orleans of drafts drawn upon it has accepted the same payable out of its deposit account with the Hanover National Bank in

New York. In this respect these drafts and their method of handling differ in no wise from drafts drawn under letters of credit which will be referred to *infra*.

"In regard to letters of credit the transactions are as follows: All letters of credit issued by the defendant originate in New Orleans. Drafts thereunder are presented to the defendant in New Orleans and the defendant accepts the drafts payable at the Hanover National Bank and the drafts thereupon become acceptances of the defendant and its obligations. Upon presentation of such drafts at the Hanover National Bank the money is paid by the Hanover National Bank out of defendant's deposit account and charged against that account. The procedure involved in the course of these transactions is illustrated by a so-called "advice" read into the record, from which it appears that the defendant in a letter from New Orleans to the Hanover National Bank notified the Hanover National Bank that a certain draft drawn on the defendant at New Orleans and there accepted payable at the Hanover National Bank would be presented for payment in New York and requesting that the latter "kindly honor same upon presentation on or after the dates noted below to the debit of our account." In a few instances drafts were presented in New York under the defendant's letters of credit wherein the letter of credit provided that the drafts were payable in New Orleans or at the Hanover National Bank and when presented in New York for payment, defendant's account was debited with the amount.

"In one instance referred to as the American Exchange National Bank case, no formal letter of credit was drawn but defendant telegraphed the Hanover Bank to pay to American Exchange National Bank up to \$422,000 upon delivery to the Hanover of documents covering 6,000 bags of sugar sold to Perkins of New Orleans by Kaiser, of Milwaukee. The Hanover Bank notified the American Exchange Bank and upon receipt of the documents paid for them and charged the amount to defendant's account, holding the documents subject to its further instructions. The documents included warehouse receipts for 6,000 bags of sugar. The goods were placed in storage in the name of the Hanover and insured by it. Warehouse receipts were from time to time handed by the Hanover to Farr & Co., brokers for Perkins. Presumably as Perkins in New Orleans paid back in instalments the sum advanced to him by defendant, the latter instructed the Hanover to deliver a proportionate amount of the warehoused sugar. The matter was not finally closed until several months had elapsed.

"In all cases where letters of credit were issued, their terms were communicated to the Hanover and when drafts under them were presented, the Hanover carefully examined the accompanying documents to see if they corresponded with the terms of the letters of credit, before making payment.

"In another instance, letters of credit were issued to the Schilthuis American Trading Company containing the usual clause with respect to drafts being payable on presentation with documents, specified in the letter of credit, annexed, at the Hanover National Bank. Prior to presentation of any such draft it appears that on August 6, 1920, the Whitney Central Bank telegraphed the Hanover Bank to advise it by wire when drafts under this letter of credit should be presented and to make no payments until further advised by the Whitney Bank. The Hanover Bank accordingly refused payment. The correspondence shows that the Hanover Bank examined the documents, communicated with the defendant about them, and on the 10th of August, 1920, telegraphed the Whitney Bank stating certain modifications which the Shilthuis Company was ready to make in the papers and advising the Whitney Bank to make 'amicable arrangements for prompt honoring of draft, otherwise repudiation will have had effect.' In response, the Whitney Bank instructed the Hanover to decline payment of drafts until otherwise instructed by it. These instructions to decline payment were complied with.

"In the case of a letter of credit to Arnold, Dorr & Co., it was presented to the Hanover and payment refused, presumably because the documents were not in accord with instructions. Upon being notified defendant advised the Hanover:

"Our customer advises us that they are informed by Messrs. Arnold, Dorr & Co. that the goods shipped under the above credit are on the steamship City of Brisbane which sails from Calcutta December 13, 1920. According to the letter of credit shipment was to have been made during the month of November, 1920. We therefore request you kindly have Arnold, Dorr & Co. furnish sufficient proof that the goods were shipped within the time stated.'

"In three instances defendant sold government bonds through Bache & Co., brokers in New York, the bonds being sent to the Hanover, which delivered them to the brokers against payment of the purchase price.

"On one occasion defendant sent to the Hanover Bank temporary certificates for 3,000 shares of the stock of Carson Pet-

roleum Co. with instructions to have them exchanged for permanent certificates in the name of Charles E. Smith and return with memorandum of any cost in the matter. There is a somewhat similar instance where 50 shares of stock standing in the name of W. Nash Read were sent with instructions to split the certificate, to sell 10 shares and return the proceeds with a new certificate in Read's name for the remaining 40 shares. Presumably these transactions were for the account of a customer of defendant.

"The above summary substantially sets forth the transactions in proof.

"The transactions set forth in the summary above certainly constitute the doing of business, and, in part, the doing of business here. Indeed, if a New York corporation owning a draft payable to its order at a bank in Boston, endorses and sends it to another bank in Boston with instructions to collect it and return the proceeds to the sender or to place them on deposit to its credit, the correspondent certainly 'does business' when it collects the money, and since the collection is made for the sender's benefit and under its instructions it may properly be said to act as the sender's agent in transacting the business. And the same may be said if the sender subsequently instructs the correspondent in Boston to use part of the proceeds in making payment out of them to some other person in Boston and such instructions are complied with. Nevertheless it is hardly to be supposed that any one would expect successfully to contend that the maintaining of a deposit account by a New York corporation in a Boston bank, involving as it does repeated transactions such as these last above described, would make the New York corporation amenable to service of process in a federal court in Boston, if its president should happen to be found there. It is not thought that plaintiff makes any such contention.

"With regard to all the other transactions rehearsed in the summary, except possibly one or two sporadic ones, it surely is common knowledge that they are the transactions which usually accompany the relation and course of business between a bank in one locality and its correspondent banks elsewhere. The business of 'banking' as known and practiced for many years is not confined to holding the money of a bank's depositors and paying it out on their drafts when presented at the bank's office, nor to discounting negotiable paper presented to it (with or without collateral) at such office. There may be

some such banks, but they surely must be few in number. A bank of any importance must have correspondent banks in other places, not only in New York, which plaintiff's counsel aptly terms "the financial heart of the United States," but in very many other localities where trade and commerce require abundant financial facilities. This involves the doing of many things which cannot be wholly done in the place where the bank is officially located. A customer of a bank in Philadelphia may have contracted for the purchase of cotton in Alabama, or of sugar in Louisiana, or of coffee in Rio, the goods to be delivered to him in New York and to be paid for on delivery. He may have sold the same goods to someone else in Chicago f. o. b. cars in New York, to be paid for when shipped. He may not have the cash required to handle the transaction, but a comprehensive and elastic banking system makes it possible. His bank in Philadelphia, if properly secured, will let him have the cash to make his payment in New York. It instructs its correspondent bank in New York, with which it has money on deposit, to advance the money 'upon proper documents,' that is when it appears that the goods are there, deliverable only to the person who holds the documents. These documents are the security for the loan. The Chicago man, through a Chicago bank's correspondent bank in New York, provides the money to pay for them and to take over the documents which evidence title. Thus the transaction is completed and the course of trade and commerce facilitated. Of course this involves the doing of business here. The two New York banks must carefully examine the documents, bills of lading, consular invoices, warehouse receipts, insurance policies, etc. In case of delay at the Chicago end, the correspondent of the Philadelphia bank may have to warehouse the goods itself until the deal is completed.

"When it is realized that New York is not the only place, but that there are hosts of other centres all over the country where commercial transactions on any extended scale would be impossible without financial aid, such as only a proper banking system can give, one would naturally suppose that the volume of financial transactions such as we have here must be enormous. The evidence shows that the defendant has six correspondent banks here. The vice-president of the Hanover Bank testified that it has 4,000 correspondent banks throughout the United States.

"Plaintiff contends that all such testimony is immaterial. It seems, however, to the Special Master that some consideration

should be given to the consequences which would result from a finding that the transactions involved in a continuance of the relations of a home bank and its correspondent bank will make the home bank subject to service of process in a federal suit brought in the domicile of the correspondent bank, whenever its president (or other proper officer) happens to be there.

"There has been an extended examination of authorities; upwards of 50 cases are found on the briefs and by following up references therein the master has found a score or so more. Now, when it is remembered that this relationship of correspondent banks is no new thing and that the volume of their transactions is enormous, it seems significant that in no case that has been found was the proposition advanced that a bank was amenable to process in the jurisdiction of its correspondent. A decision here that there is such jurisdiction would be one of novel impression and it seems proper to consider how far-reaching might be its effects. There is authority for giving due consideration to the results in such a case as this. In *Philadelphia & Reading Railway vs. McKibbin*, 243 U. S., 264, it was contended that a railway company was doing business in a state other than the one where it operated its railroad, because through tickets covering carriage over its lines were sold there. It was held, following *Green vs. Chicago, Burlington and Quincy Ry.*, 205 U. S. 230, that this was not 'doing business,' although in the *C. B. Q.* case there was a district freight and passenger agent to solicit and secure passengers and freight, having under his direction several clerks and traveling passenger and freight agents.

"The Court in the *P. & R. Ry.* case says:

'Obviously the sale by a local carrier of through tickets does not involve a doing of business within the state by each of the connecting carriers. If it did, nearly every railroad company in the country would be 'doing business' in every state.'

"It may be exceeding the limitation of the order, to call attention to a well-considered opinion of Judge Rose in *Noel Construction Co. v. Smith Co.*, 193 Fed., 492. He says:

'Where the question of jurisdiction is gravely in doubt, it is usually best to decline it. If it be taken by the Judge at *nisi prius*, the appellate tribunal may differ from him. In such a case a long and expensive trial may go for nought. Moreover by the time it is finally settled that there is no jurisdiction in the court in which the suit was brought,

the statute of limitations may prevent its being instituted elsewhere. Under these circumstances and on these grounds I, with some hesitation, sustain the motion to quash.'

"Within the writer's recollection it was for many years the practice in the U. S. Circuit Court here to remand every case, removed from the State Court, which indisputably had jurisdiction, whenever there was any substantial question as to the right to remove. That practice originated as a result of the unfortunate experience of a litigant in the C. C. E. District of N. Y. He brought suit in a State Court which had full jurisdiction; defendant removed the cause, plaintiff moved to remand. The motion was denied, although the propriety of removal was a fairly arguable question. A long and very expensive trial followed in the Circuit Court in which plaintiff obtained judgment for \$150,000. In the fullness of time the cause reached the U. S. Supreme Court upon certification by the C. C. A. of the jurisdictional question. The Supreme Court held that the cause was not removable, that the Circuit Court had no jurisdiction, and the motion to remand should have been granted. Thus, as Judge Rose expresses it, 'A long and expensive trial went for nought.' The cause is *Mexican Nat. R. R. Co. v. Davidson*, 157 U. S., 201.

"The stenographer's minutes are filed with the report and the exhibits will be returned to counsel.

Respectfully submitted,

E. HENRY LACOMBE,
Special Master.

July 29th, 1921."

The said report is marked, "United States District Court Southern District of New York. *The Bank of America, v. The Whitney Central National Bank*. Action No. 1—L—25-P 204. Motion to set aside service of summons. Report of Special Master. U. S. District Court S. D. of New York filed July 29, 1921."

(f)

The plaintiff on the 4th day of August, 1921, filed exceptions to said report of said Special Master entitled in this action, which said exceptions, omitting said title, are as follows:

"The Plaintiff herein excepts to the Report of E. Henry Lacombe, Special Master in this cause, dated July 29, 1921, and filed herein on that day, in the following respects:

1. In that the Master erred in the admission and exclusion of evidence contrary to the Plaintiff's Objections.

2. In that in and by the said Report such Special Master failed to find as was the fact and as he should have found, that the defendant on the 13th day of April, 1921, was and theretofore had been doing business in the Southern District of New York in the State of New York.

3. In that in and by the said Report such Special Master failed to find as was the fact and as he should have found, that the defendant on the 13th day of April, 1921, was and theretofore had been doing business in the Southern District of New York in the State of New York, of such a nature as to make the defendant subject to the service of process in this action on its President in said Southern District of New York.

4. In that in and by the said Report such Special Master failed to find as was the fact and as he should have found, that the defendant was on April 13, 1921, served with the summons in this action in the Borough of Manhattan, City of New York, Southern District of New York and State of New York.

5. In that in and by the said Report such Special Master failed to find as was the fact and as he should have found, that the delivery of a copy of the summons in this action to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, Southern District of New York and State of New York, on the 13th day of April, 1921, constituted a valid service of the summons in this action on the defendant and subjected the defendant to the jurisdiction of this Court in this action.

6. In that the said Special Master in and by his said Report erroneously found that the testimony is material, which it is therein stated the plaintiff contends is immaterial.

7. In that the said Special Master in and by his said Report suggests or reports that the motion to set aside the service of the summons herein upon the defendant, and for an order setting aside and declaring null and void such service of the summons herein upon the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of

New York, on the 13th day of April, 1921, should be granted, whereas the said motion should have been denied in all respects.

RUSHMORE, BISBEE & STERN,
Attorneys for Plaintiff,
61 Broadway,
Borough of Manhattan,
City of New York.

To

ALEXANDER GILCHRIST, JR., ESQ.,

Clerk of the District Court of the
United States for the Southern
District of New York.

GRIGGS, BALDWIN & BALDWIN, ESQS.,

Attorneys specially appearing for
defendant."

The said exceptions are endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff, against The Whitney Central National Bank, Defendant. Exceptions to report of Special Master. L125-P 204. Rushmore, Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, Borough of Manhattan, New York City. U. S. District Court S. D. of New York filed Aug. 4, 1921.

(g)

The motion heretofore referred to in subdivision "a" hereof, of the defendant to set aside the alleged attempted service of the summons herein upon the said defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York on the 13th day of April, 1921, was thereafter brought on for final hearing, and after argument by counsel for and against the motion, respectively, and after due consideration by the court on the 4th day of August, 1921, granted by order in this action filed on said day wherein and whereby it was

"ORDERED that said motion be and it hereby is granted and that said attempted service of the summons herein in the above entitled action on the defendant by delivering a copy thereof

to John E. Bouden, Jr., in the Borough of Manhattan, City of New York on the 13th day of April, 1921, be and it hereby is set aside and declared null and void, on the ground that such attempted service was unauthorized, unlawful, null and void, and that this court had not by such attempted service acquired jurisdiction of the defendant herein."

And now in furtherance of justice and that right may be done, the defendant, The Bank of America, tenders and presents the foregoing as its bill of exceptions in this case to the action of the court, and prays that the same may be settled and allowed and signed and sealed by the court and made a part of the record, and the same is accordingly done this 31st day of October, 1921.

JULIAN W. MACK
U. S. Circuit Judge.

**DISTRICT COURT OF THE UNITED STATES
For the Southern District of New York**

THE BANK OF AMERICA, PLAINTIFF,

against

THE WHITNEY CENTRAL NATIONAL BANK,
DEFENDANT.

Action No. 1

L-25-P 204.

Thereafter on the 31st day of October, 1921 and within the time allowed by said District Court of the United States for the Southern District of New York, the defendant duly tendered the foregoing, its bill of exceptions herein, which having been seen and examined by the court and counsel, is by the court allowed and approved, and in order that said proceedings had may more certainly appear on record in this cause, I, Hon. Julian W. Mack, Judge of said court before whom all proceedings in this court were had, this day during the same term of court at which said order last mentioned was made by this court

and entered, do settle, allow, sign and certify the foregoing as and for the bill of exceptions in this cause, and all therein contained is made manifest and part of the record in said cause, and I hereby certify that said bill of exceptions contains all the evidence and proofs and proceedings had in this court in said cause, which include all the evidence and proofs produced in said proceedings, and I further certify that the jurisdiction of the court is in issue in said cause and is the only question arising in said cause.

And the said bill of exceptions is signed and sealed by the Hon. Julian W. Mack and the same is ordered by said court to be filed and made a part of the record herein which is now accordingly done.

Given under the hand and seal of the Judge of said court before whom said proceedings were had, this 31st day of October, 1921.

JULIAN W. MACK,
U. S. Circuit Judge.

The above and foregoing bill of exceptions and above certificate thereto are hereby approved.

RUSHMORE, BISBEE & STERN,
Attorneys for Plaintiff.

GRIGGS, BALDWIN & BALDWIN,
Attorneys for Defendant,
Specially appearing for the
purposes of the motion only.

Let the bill of exceptions be filed and the filing shown of record as of the 31st day of October, 1921.

JULIAN W. MACK,
U. S. Circuit Judge.

The foregoing Bill of Exceptions is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff against Whitney Central National Bank, Defendant. Action No. 1 L. 25, P. 204. Bill of Exceptions. Rushmore, Bisbee & Stern, Attorneys for Plaintiff Office and Post-Office Address, No. 61 Broadway

Borough of Manhattan New York City, N. Y. Griggs, Baldwin & Baldwin, Attorneys for Defendant, specially appearing, Office and Post-Office Address No. 27 Pine Street, Borough of Manhattan, New York City, N. Y. United States District Court S. D. of N. Y. Filed Oct. 31, 1921."

—o—

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

Action No. 1—L. 25, Page 204.

And now comes The Bank of America, plaintiff herein, and also plaintiff-in-error herein, and says: That on or about the 4th day of August, 1921, the District Court of the United States for the Southern District of New York entered a final order herein in favor of the defendant and against the plaintiff in which, and the proceedings had prior thereto in this case, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed in this petition.

WHEREFORE, this plaintiff prays that a writ of error may issue in its behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

RUSHMORE, BISBEE & STERN,
Attorneys for Plaintiff,
Office and Post Office Address,
61 Broadway,
Borough of Manhattan,
New York City, N. Y.

The foregoing petition for writ of error is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, plaintiff, —against— Whitney Central National Bank, Defendant. Action No. 1 L 25—Page 204. Petition for Writ of Error. Rushmore,

Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed Nov. 1, 1921."

—o—

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

Action No. 1—L. 25, Page 204.

Afterwards, to-wit, in this same term, before the Justices of the Supreme Court of the United States, at the Capitol, in the City of Washington, in the District of Columbia, comes the said The Bank of America, by Rushmore, Bisbee & Stern, its attorneys, and says that in the record and proceedings aforesaid in the above cause there is manifest error in this, to-wit:

1. That, by the record aforesaid, it appears that the service of the summons upon John E. Bouden, Jr., President of the corporation, in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, was, by an order dated the 4th day of August, 1921, set aside and declared null and void, on the ground that such service was unauthorized, unlawful and null and void, and that this Court did not by such attempted service acquire jurisdiction of the defendant herein, whereas, by the law of the land, the said service of the summons ought to have been sustained and held valid.

2. In that the said District Court, by the law of the land, had and should have exercised jurisdiction in this action over said defendant, whereas it denied that it had jurisdiction of the said defendant.

3. That the said District Court failed to find and decide, as was the fact and as it should have found and decided, that the said defendant on the 13th day of April, 1921, was and theretofore had been doing business in the Southern District of New York in the State of New York.

4. That said District Court failed to find and decide, as was the fact and as it should have found and decided, that the defendant on the 13th day of April, 1921, was and there-

tofore had been doing business in the Southern District of New York in the State of New York of such a nature as to make the defendant subject to the service of process in this action on its President in said Southern District of New York.

5. That the said District Court failed to find and decide, as was the fact and as it should have found and decided, that the defendant was on April 13, 1921, duly served with the summons in this action in the Borough of Manhattan, City of New York, Southern District of New York and State of New York.

6. That the said District Court failed to find and decide, as was the fact and as it should have found and decided, that the delivery of a copy of the summons in this action to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, Southern District of New York and State of New York, on the 13th day of April, 1921, constituted a valid service of the summons in this action on the defendant and subjected the defendant to the jurisdiction of said District Court in this action.

7. That the Special Master and the Court refused to permit the plaintiff, upon the ground that it cumulative, to prove or to attempt to prove that

The Whitney Central National Bank under date of April 17, 1920 issued its two letters of credit No. 4333 and 4334 to Messrs. Ham and Seymour of New York City, New York in the following form:

"Letter of Credit No. 4333

Messrs. Ham & Seymour, WHITNEY CENTRAL NATIONAL
New York, New York. BANK OF NEW ORLEANS, LA.
New Orleans, La. April 17, 1920.

Dear Sirs:

We hereby authorize you to value on THE WHITNEY CENTRAL NATIONAL BANK, New Orleans, at sight, payable at the HANOVER NATIONAL BANK, New York, not exceeding in the aggregate TWO HUNDRED FORTY-SIX THOUSAND, FOUR HUNDRED DOLLARS to be used by you for invoice cost of 500 tons of Java White Sugar at 22c per pound duty paid, to be purchased for account of

Messrs. John Barkley & Co., Ltd., New Orleans, or whom it may concern and to be shipped to New York, 50 tons July, 1920, 135 tons July August, 1920 315 tons August September 1920.

The drafts must be drawn and Bills of Lading dated in New York prior to 15th day of December, 1920, and advice thereof given by you in original and duplicate, such advice to be accompanied by Bills of Lading, Custom-house Permit and Delivery Order filled up to order of the Whitney Central National Bank, New Orleans, La., with abstract of invoice endorsed thereon, or a copy of invoice accompanying the said Bill of Lading for the property shipped as above.

All the Bills of Lading issued, except one to be mailed to us and one to be retained by the Captain of the vessel carrying the cargo, are to accompany the drafts. The original invoice, properly certified by the United States Consul, to be forwarded to us.

We hereby agree with the drawees, endorsers and bona fide holders of bills drawn in compliance with the terms of this Credit, that the same shall be duly honored on presentation at the office of the Whitney Central National Bank, New Orleans.

\$246,400.00

We are Dear Sirs,

Yours very truly,

WHITNEY CENTRAL NATIONAL BANK
FOREIGN EXCHANGE DEPARTMENT
Royal R. Bastian,
Manager.

N. B. Drafts must state on their face that they are drawn on Whitney Central National Bank Credit.

No. 4333, dated April 17, 1920.
Insurance by Seller."

That the Hanover National Bank was notified by the Whitney Central National Bank of both of said letters of credit and of their terms.

8. That the Special Master refused to strike out as irrelevant and immaterial and the Court failed so to do, and to

disregard as irrelevant and immaterial the testimony of the witness Suydam given in answer to the following questions:

Q. Just one question, Mr. Suydam: you have explained to us the extent of this practice or condition or whatever you may call it of correspondent banks and from your testimony we understand pretty well what the result of that is, in the way of transactions; is that practice or condition or whatever you may call it in the way of a correspondent bank something of recent growth or is it something that has been going on in banking practice for some considerable time? A. It has been common in banking practice as long as I have been here, in the 29 years of my service.

Q. I do not know but that it had something to do with the Federal Reserve System? A. No, in fact, it had prevailed more before the Federal Reserve System was in force.

Q. Is the same thing true of the manner in which letters of credit are handled, Mr. Suydam? A. Why, letters of credits have been handled more by banks in the inland in the last ten or fifteen years. It is a common practice, however, all over the country, to handle letters of credit similar to the manner in which we are handling the Whitney Central National Bank.

Q. And the instances that have been referred to in connection with this testimony, are they typical of the letter of credit transactions that have been handled during the period you speak of, in all banks? A. They are typical of all transactions that we handle for other banks. Some of them use a little different wording, for instance, a bank in Philadelphia will say, in issuing his own credit, "through" the Hanover National Bank; a bank in Chicago will issue its own letter of credit and will say "payable at the Continental and Commercial Bank" or the Hanover National Bank.

Q. It is merely a question of phraseology? A. Just a question of wording.

9. That the Special Master refused to strike out as irrelevant and immaterial and the Court failed so to do and to disregard as irrelevant and immaterial the testimony of the witness Suydam given in answer to the following questions:

Q. How many of those deposit accounts have you got in the Hanover National Bank? A. May I ask, do you mean similar deposit accounts?

Q. Similar deposit accounts? A. We have over 4,000 similar deposit bank accounts.

Q. And those similar deposit bank accounts are all accounts of banks that are located all over the United States, are they not? A. North, South, East and West, all over the United States.

Q. Every state of the Union, I presume is represented? A. Every state of the Union.

Q. And every city of any size in every State of the Union? A. Nearly every city.

Q. Now, are all of these accounts that you refer to handled in the same fashion as the Whitney Central National Bank? A. They are all handled in the same fashion according to the business that they send us. Some localities will send a different class of business than another.

10. In that the Court regarded as material and relevant the aforesaid testimony, which was immaterial and irrelevant.

11. In that the said District Court erred in failing to deny the aforesaid motion made on behalf of the defendant to set aside the service of the summons herein upon the said defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921.

12. That the Special Master and the Court regarded as material and relevant, whereas the same was immaterial and irrelevant, and refused to strike out as irrelevant and immaterial, all the answers of the witness Suydam with regard to the business transacted by the Hanover National Bank with banks having deposit accounts with the Hanover National Bank other than the Whitney Central National Bank and other than banks in the City of New York.

WHEREFORE said The Bank of America prays that the setting aside of and declaring null and void and the said order setting aside and declaring null and void the said service of the summons aforesaid be reversed, annulled and altogether

held for nothing, and that The Bank of America may be restored to all things which it hath lost by occasion of the said order, etc.

RUSHMORE, BISBEE & STERN,
Attorneys for The Bank of America,
Plaintiff-in-error.

The foregoing assignment of errors is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff, —against— Whitney Central National Bank, Defendant. Action No. 1 L. 25— Page 204. Assignment of Errors. Rushmore, Bisbee & Stern, Attorneys for Plaintiff-in-Error, 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed Nov. 1, 1921."

—o—

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*

against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

KNOW ALL MEN BY THESE PRESENTS:

That we, THE BANK OF AMERICA, and the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized under the laws of the State of Maryland, having an office and usual place of business at No. 75 William Street, in the borough of Manhattan, City of New York, as Surety, are held and firmly bound unto WHITNEY CENTRAL NATIONAL BANK in the sum of FIVE HUNDRED (\$500.00) DOLLARS, lawful money of the United States of America, to be paid to the said WHITNEY CENTRAL NATIONAL BANK, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this 1st day of November, 1921.

WHEREAS, THE BANK OF AMERICA has sued out a writ of error to the Supreme Court of the United States from a final order or judgment rendered against the said THE BANK OF AMERICA on August 4th, 1921 in the District Court of the United States for the Southern District of New York.

NOW, THEREFORE, the condition of this obligation is such that if the said THE BANK OF AMERICA shall prosecute its writ of error to effect and answer all damages and costs if it fail to make its plea good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

Signed, Sealed and Delivered
in the Presence of:

THE BANK OF AMERICA
By C. M. Fuicke,
Vice-Prest.

UNITED STATES FIDELITY AND GUARANTY COMPANY

{ Seal of United States
Fidelity and
Guaranty Company }

By S. Frank Hedges

Attest:

William H. Estwick
Attorney-in-fact.

{ Seal of The Bank
of America }

State of New York,
County of New York, ss.:

On this 1st day of November, 1921, before me personally appeared Clarence M. Fuicke, Vice-President of The Bank of America with whom I am personally acquainted, who, being by me duly sworn, said: That he resided in the State of New Jersey, that he is Vice-President of The Bank of America, the corporation described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the within instrument is such seal; that it was so affixed by the order of the Board of Directors of the said corporation, and that he signed his name thereto as Vice-President by like authority.

ROBT. E. J. CORCORAN
Notary Public, Kings Co.

Certificate Filed in New York Co.

(Seal)

N. Y. Co. Clks. No. 326, N. Y. Reg. No. 2284

State of New York, }
 County of New York, } ss.:

Before me personally came S. Frank Hedges, known to me to be Attorney-in-fact of the United States Fidelity and Guaranty Company, the corporation described in and which executed the annexed bond of The Bank of America, as surety thereon, who being by me duly sworn, deposes and says that he resides in the City of New York, state of New York, and that he is the Attorney-in-fact of the said United States Fidelity and Guaranty Company, and knows the corporate seal thereof; that said Company is duly and legally incorporated under the laws of the State of Maryland; that said Company has complied with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety bonds; that the seal affixed to the annexed bond of The Bank of America, is the corporate seal of the said United State Fidelity and Guaranty Company, and was thereto affixed by order and authority of the Board of Directors of said Company; and that he signed his name thereto by like order and authority as such Attorney-in-fact of said Company; and that he is acquainted with William H. Estwick and knows him to be Attorney-in-fact of said Company; and that the signature of said William H. Estwick, subscribed to said bond is the genuine handwriting of said William H. Estwick, and was thereto subscribed by order and authority of said Board of Directors, and in the presence of said deponent; and that the assets of said Company, unencumbered and liable to execution, exceed its claims, debts and liabilities, of every nature whatsoever, by more than the sum of two million dollars (\$2,000,000.00).

S. FRANK HEDGES.

Sworn to, acknowledged before me, and subscribed in my presence this 1st day of November, 1921.

C. B. BRADBURY

Notary Public, Westchester County, Certificates filed in the following counties;—New York, Clerks No. 791, Registers No. 3632. Kings, Clerks No. 79, Registers No. 3329. Bronx; Clerks No; 49, Registers No. 97. Queens, No. 524. Richmond, Nassau, Orange, Suffolk and Rockland. Term expires March 30th, 1923.

The foregoing bond is endorsed: "United States District Court Southern District of New York The Bank of America, Plaintiff, —against— Whitney Central National Bank, Defendant. Bond Rushmore, Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, New York City. The within undertaking is approved as to form and as to the sufficiency of the surety. J. W. Mack United States District Court S. D. of N. Y. Filed Nov. 1, 1921."

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UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*

against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

This first day of November, 1921, comes the plaintiff, by its attorneys, and files herein and presents to the Court its petition praying for the allowance of a writ of error, and the assignment of errors intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the final order herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

On consideration whereof, the Court does allow the writ of error upon the plaintiff giving bond, according to law, in the sum of Five hundred dollars (\$500), which shall operate as a supersedeas bond.

JULIAN W. MACK

U. S. Circuit Judge.

The foregoing order allowing appeal is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff —against— Whitney Central National Bank, Defendant. Action No. 1, L. 25 Page 204. Allowance of Appeal. Rushmore, Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed Nov. 1, 1921."

UNITED STATES OF AMERICA, ss.:

To:

WHITNEY CENTRAL NATIONAL BANK,

Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington on the 15th day of November next, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein The Bank of America is plaintiff and you are defendant-in-error, to show cause, if any there be, why the judgment or final order rendered against the said plaintiff-in-error as in the said writ of error mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

GIVEN under my hand at the City of New York, in the District above named, this 1st day of November, in the year of our Lord, one thousand nine hundred and twenty-one.

JULIAN W. MACK

U. S. Circuit Judge.

The foregoing citation is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff, —against— Whitney Central National Bank, Defendant. Action No. 1 L. 25—Page 204 Citation to defendant in Error. Rushmore, Bisbee & Stern, Attorneys for Plaintiff-in-Error, 61 Broadway, Borough of Manhattan, New York City Due and timely service of copy of the within citation is hereby admitted this 1st day of November 1921. Griggs, Baldwin & Baldwin, Attorneys for Deft —appearing specially United States District Court S. D. of N. Y. Filed Nov. 2, 1921."

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK.

THE BANK OF AMERICA, *Plaintiff*
against

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

Action No. 1—L. 25, Page 204.

It is hereby stipulated and agreed by and between the parties hereto that the Clerk of the District Court of the United States for the Southern District of New York is hereby requested to take a transcript of record to be filed in the Supreme Court of the United States, pursuant to a writ of error allowed in the above entitled cause and to include in such transcript of record the following and no other papers or exhibits, to wit:

The writ of error, the summons herein filed herein April 15, 1921 and the affidavit of R. E. J. Corcoran, relating thereto, verified April 15, 1921, filed herein April 15th, 1921, the notice of motion in this action by said defendant filed herein May 4, 1921, the order appointing the Special Master, filed herein May 19, 1921, the bill of exceptions filed herein October 31, 1921, the final order filed herein August 4, 1921, the certificate of Hon. Julian W. Mack, filed herein August 4, 1921, petition for writ of error, assignment of errors, order allowing writ of error, bond, approval of bond and citation, all filed herein on the first day of November, 1921.

And it is further stipulated and agreed that the records, documents, papers and proceedings above set forth are sufficient for a complete transcript of record in this cause to said Court and are adopted as a list designated by each of the parties to this cause to complete said transcript; and that, as all of the other papers, proceedings and exhibits in this cause are contained and fully set forth in said bill of exceptions, including the affidavit of John E. Bouden, Jr., verified April 16, 1921, filed herein May 4, 1921, mentioned in said notice of motion, the affidavits of Henry Root Stern, verified April 28, 1921, Edward W. Russell, verified April 28, 1921, Edward W. Russell, verified April 28, 1921, Amandus W. Austin, verified April 28, 1921, Henry J. Schuler, verified April 28, 1921, Edward C. Delafield, verified April 28, 1921, Nathan A. Smyth,

verified April 28, 1921 and Henry Root Stern, verified April 29, 1921, all filed herein April 29, 1921, the testimony and record of proceedings, the stenographer's minutes containing the testimony and record of proceedings had before the Special Master and the exhibits introduced before him, filed herein July 29, 1921, the report of said Special Master filed July 29, 1921, and the plaintiff's exhibits to said report filed herein August 4, 1921, the inclusion, other than in said bill of exceptions, of each and every of said papers, proceedings and documents in said transcript of record is hereby waived, and they shall be omitted therefrom.

And the parties hereto hereby waive the issuance of service of notice upon any party hereto, and agree that this stipulation shall be obeyed by and acted upon by the Clerk as fully and to all intents and purposes in the same manner as if a praecipe had been regularly filed and a true copy thereof served upon each party hereto.

Dated November 10th, 1921.

HENRY ROOT STERN,
Counsel for Plaintiff.

RUSHMORE, BISBEE & STERN,
Attorneys for Plaintiff.

MARTIN CONBOY,
Counsel for defendant specially
appearing for the purposes
of the motion only.

GRIGGS, BALDWIN & BALDWIN,
Attorneys for defendant specially
appearing for the purposes
of the motion only.

The foregoing stipulation is endorsed: "District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff, —against— Whitney Central National Bank, Defendant. Action No. 1 L. 25—Page 204. Stipulation as to Contents of Record on Appeal. Rushmore, Bisbee & Stern, Attorneys for Plaintiff, 61 Broadway, Borough of Manhattan, New York City United States District Court S. D. of N. Y. Filed Nov. 14th, 1921."

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

—o—

THE BANK OF AMERICA, *Plaintiff*

vs.

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

IT IS HEREBY STIPULATED AND AGREED, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, New York, November 14, 1921.

RUSHMORE, BISBEE & STERN
Attorneys for Plaintiff,

GRIGGS, BALDWIN & BALDWIN,
Attorneys for Defendant,
Specially appearing for the
purpose of the motion only.

HENRY ROOT STERN,
Counsel for Plaintiff.

MARTIN CONBOY,
Counsel for Defendant,
Specially appearing for the
purposes of the motion only.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK, } ss.:

—o—

THE BANK OF AMERICA, *Plaintiff*

vs.

WHITNEY CENTRAL NATIONAL BANK, *Defendant*

—o—

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

IN TESTIMONY WHEREOF, I have caused the seal of the said	
SEAL OF	Court to be hereunto affixed, at the City of New
(District	York, in the Southern District of New York, this
Court of the	fourteenth day of November in the year of our
United	Lord one thousand nine hundred and twenty-one
States,	and of the Independence of the said United
Southern	States the one hundred and forty-sixth.
District of	
N. Y.)	ALEX. GILCHRIST, JR., <i>Clerk.</i>

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment or final order of a plea which is in the District Court, before you, or some of you, between The Bank of America, Plaintiff, and Whitney Central National Bank, Defendant, a manifest error hath appeared, to the great damage of the said The Bank of America, as is said and appears by its complaint, We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 15th day of November, 1921, that the record and proceedings aforesaid being inspected the said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 1st day of November, in the year of our Lord one thousand nine hundred and twenty one and of the Independence of the United States the one hundred and forty-fifth.

[Seal of District Court of the United States, Southern District of N. Y.]

[L. S.]

ALEX. GILCHRIST, JR.,
*Clerk of the District Court of the United
States of America for the Southern
District of New York, in the Second
Circuit.*

The foregoing writ is hereby allowed:

JULIAN W. MACK,
U. S. Circuit Judge.

[Endorsed:] L. 25/204. File No. —. Year —. District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff-in-Error, vs. Whitney Central National Bank, Defendant-in-Error. Original. Writ of Error. Rushmore, Bisbee & Stern, Attorneys for Plaintiff-in-Error, 61 Broadway, Borough of Manhattan, New York City. A. 1.10. U. S. District Court, S. D. of N. Y. Filed Nov. 1, 1921.

UNITED STATES OF AMERICA, *ss.*

To Whitney Central National Bank, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington on the 15th day of November next, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the Southern District of New York, wherein The Bank of America is plaintiff and you are defendant-in-error, to show cause, if any there be, why the judgment or final order rendered against the said plaintiff-in-error as in the said writ of error mentioned, should not be corrected, and speedy justice be done to the parties in that behalf.

Given under my hand at the City of New York, in the District above named, this 1st day of November, in the year of our Lord, one thousand nine hundred and twenty-one.

JULIAN W. MACK,

U. S. Circuit Judge.

[Endorsed:] File No. —. Year —. District Court of the United States for the Southern District of New York. The Bank of America, Plaintiff, against Whitney Central National Bank, Defendant. Action No. 1. L. 25-Page 204. Original. Citation to Defendant-in-error. Rushmore, Bisbee & Stern, Attorneys for Plaintiff-in-error, 61 Broadway, Borough of Manhattan, New York City. 10 A. U. S. District Court, S. D. of N. Y. Filed Nov. 2, 1921. Due and timely service of copy of the within citation is hereby admitted this 1st day of November 1921. Griggs, Baldwin & Baldwin, Attorneys for Def't, Appearing Specially.

Endorsed on cover: File No. 28,572. S. New York D. C. U. S. Term No. 617. The Bank of America, plaintiff in error, vs. Whitney Central National Bank. Filed November 15th, 1921. File No. 28,572.

No. 205

FILED
JAN 2 1923

WM. F. STANSBURY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922.

THE BANK OF AMERICA,

Plaintiff in Error,

against

WHITNEY CENTRAL NATIONAL BANK,

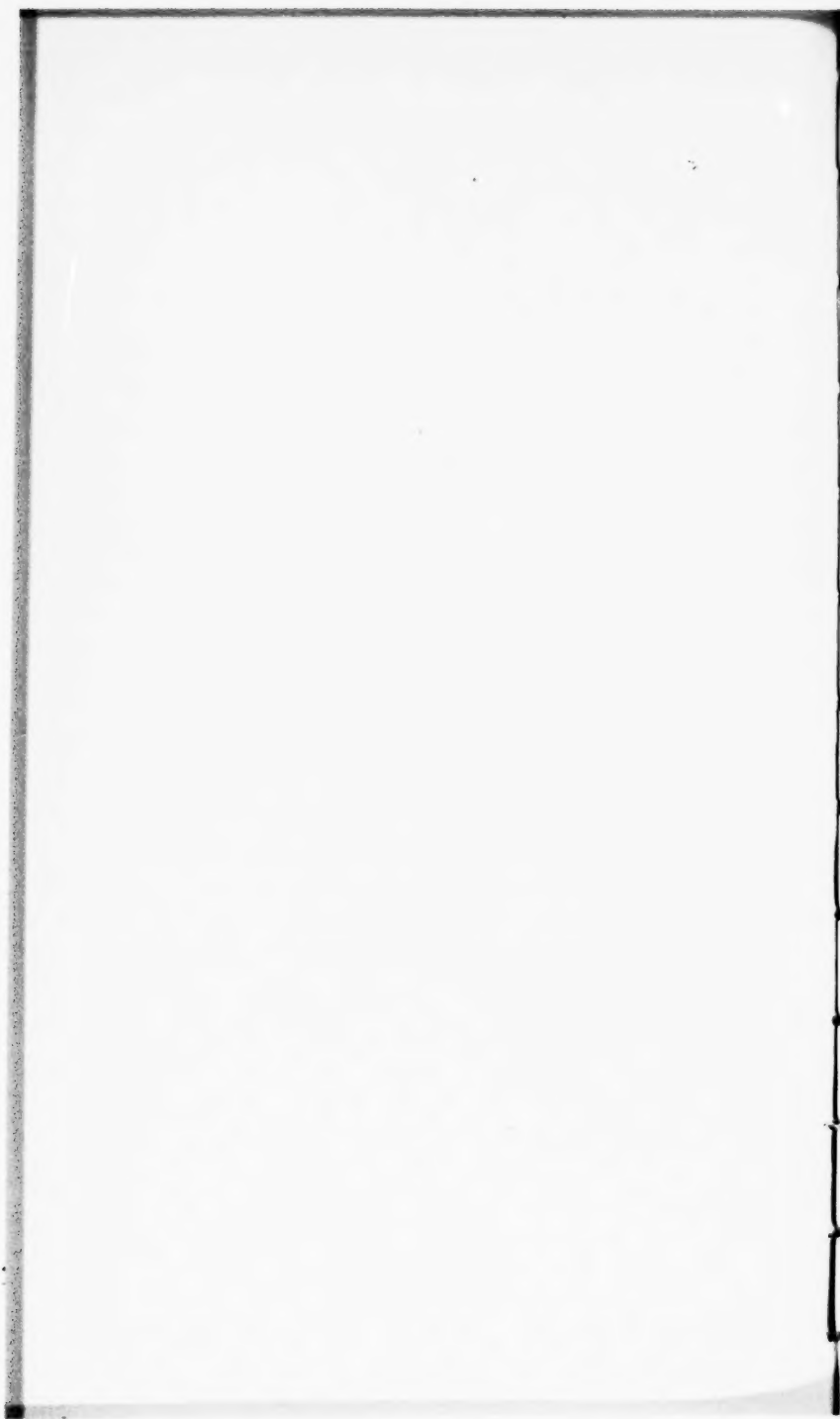
Defendant in Error.

In Error to the District Court of the United States for the
Southern District of New York.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

HENRY ROOT STERN,

Counsel for Plaintiff in Error.



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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1922.

THE BANK OF AMERICA,
Plaintiff in Error,

v.

WHITNEY CENTRAL NATIONAL BANK,
Defendant in Error.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR PLAINTIFF IN ERROR.

Statement of the Case.

On April 13, 1921, the summons in this action, brought by the plaintiff in error, The Bank of America, as plaintiff, against the defendant in error, Whitney-Central National Bank, as defendant, was served on John E. Bouden, Jr., at that time concededly the president of the defendant in error, in the City of New York, Southern District of New York and State of New York (R. 3, 4, 13, 14, 15, 27, 153, 154, 159, 145). Thereupon the defendant in error, appearing specially for the purpose of moving to set aside the service of the summons, gave

notice of motion, dated April 16, 1921, for an order "setting aside and declaring null and void the attempted service of the summons herein on the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, on the ground that such attempted service was unauthorized, unlawful, and null and void and that this Court did not by such attempted service acquire jurisdiction of the defendant, and for such other and further relief as to the Court may seem just" (R. 5, 6, 12).

The motion was made upon a short affidavit of John E. Bouden, Jr., (R. 5, 13), verified April 16, 1921, wherein he briefly set forth that he had been for some time past the president of the defendant in error, which was and since its organization had been a national bank existing under the laws of the United States, located in and which had its bank, principal office and place of business in the City of New Orleans, State of Louisiana and had never been located nor had an office or place of business elsewhere, and which had never been authorized to do business within the State of New York, had never applied for permission to do business in the State of New York, had never maintained an office or agent for the transaction of any business in the State of New York, and was not then and was not at any of the times mentioned doing business in the State of New York (R. 13).

The plaintiff in opposition to said motion offered various affidavits (R. 13, 25, 24), and thereupon, based on these affidavits, an order was made (R. 25) that "the questions of fact arising upon said motion be and the same hereby are referred to E. Henry Lacombe, Esq., as Special Master, to take proofs thereon and report the same with his finding thereon to this Court."

The Special Master thereafter filed his report with the testimony and record of proceedings had before him

under said order (R. 160-171). The plaintiff in error thereafter filed exceptions to said report (R. 171, 173).*

Thereafter the said motion to set aside the service of the summons was brought on for final hearing (R. 173), and thereupon, without the rendition of an opinion, by order entered August 4, 1921, it was ordered "that the motion be granted and that said attempted service of the summons herein in the above entitled action on the defendant by delivering a copy thereof to John E. Bouden, Jr., in the Borough of Manhattan, City of New York, on the 13th day of April, 1921, be and it hereby is set aside and declared null and void on the ground that such attempted service was unauthorized, unlawful, null and void, and that this Court had not by such attempted service acquired jurisdiction of the defendant herein" (R. 9, 10, 173, 174).

At the same time a certificate was made and filed by the judge showing that a jurisdictional question solely was involved (R. 130).

Thereafter, the plaintiff in error duly sued out this writ of error from this Court to review said order entered August 4, 1921 (R. 176, 192).

The Facts.

The Hanover National Bank of the City of New York has its principal office and banking house at 11 Nassau Street in the City, County and State of New York. It has no branches nor agencies anywhere else. The defendant in error, Whitney-Central National Bank of the

* Strictly speaking, under the New York Practice, upon such a reference to take evidence and report, exceptions are not required to be filed, nor are they necessary in order to bring anything up for review on appeal from the order based on the report (*Doremus v. Doremus*, 76 Hun. 337; *Martin v. Hodges*, 45 Hun. 38; *Winfield v. Stacom*, 40 App. Div. 95; *Rovnianek v. Kossalko*, 61 App. Div. 486; *Frost v. Reinach*, 40 Misc. 412). Such a report is not conclusive upon the Court; it might adopt it or might disregard it (*Martin v. Hodges*, *supra*; *Marshall v. Meech*, 51 N. Y. 140; *Patten v. Bullard*, 3 N. Y. St. Rep. 735; *Aff'd*, 118 N. Y. 669; *Rovnianek v. Kossalko*, *supra*).

City of New Orleans, Louisiana, had no office nor branch in the City of New York (R. 27, 117). The Hanover National Bank is a correspondent of the Whitney-Central National Bank and had been such for many years prior to the service of the summons (R. 28, 29). The Hanover National Bank had had transactions with the Whitney-Central National Bank for many years theretofore (R. 118). It is claimed by the plaintiff in error that proof of these transactions, the details of which will be hereafter referred to, establishes the fact that the defendant in error was at the time of the service of the summons and theretofore had been doing business in the Southern District of New York in the State of New York of such a nature as to make the defendant subject to the service of process in this action on its president in said Southern District of New York. The facts as to these transactions were brought out in evidence in detail and it was thereupon stipulated between the parties (R. 130) as follows:

“In order not to incumber the Record with an unnecessary repetition of testimony it is, for the purposes of this motion only, stipulated between the parties * * * that at the time of the service of the summonses herein, the transactions or course of conduct between the Whitney-Central National Bank of New Orleans and the banks whose names are hereinbelow set forth were of the same character as the transactions or course of conduct with the Hanover National Bank, except that such transactions or course of conduct was less in volume than with the Hanover National Bank and that such transactions or course of conduct with said other banks did not involve letters of credit or drafts payable under letters of credit.

National Bank of Commerce

Liberty National Bank, now merged into the New York Trust Co.

Mechanics & Metals National Bank

National City Bank

Chase National Bank.

All of the above banks being located and having their offices in the City, County and State of New York."

The Deposit Account.

At the time of the service of the summons on April 13, 1921, and for many years before that, the defendant in error, Whitney-Central National Bank had a deposit account with the Hanover National Bank and there was a balance to its credit of \$232,509.37 on that date, and the Hanover National Bank was accustomed to render statements of the account to the Whitney-Central National Bank at least once a month, the last one prior to the time the evidence was taken, having been rendered the last day of April, 1924 (R. 29, 30, 66), shows transactions for each working day in the month (R. 71-73).

In this account there were deposited, as received from the Whitney-Central National Bank, items which the Whitney-Central National Bank had for collection in New York City or vicinity. The items received for collection consisted of checks, drafts, notes, coupons, bills of exchange (R. 118). Cash items, that were payable on demand, were placed to the credit of the Whitney-Central National Bank subject to their collection and, if unpaid, charged back to the account. Time items were placed on the records of the Hanover National Bank and presented at their maturity dates to the parties on whom they were drawn and then immediately credited to the deposit account of the Whitney-Central National Bank if paid, and if unpaid, were returned to the Whitney-Central National Bank with the reason for non-payment (R. 119, 158).

From time to time, checks or drafts were drawn on the Hanover National Bank by the Whitney-Central National Bank and were paid by the Hanover National

Bank and debited on its deposit account. In other cases, the Whitney-Central National Bank sent instructions by telegraph or mail to the Hanover National Bank to make payments to parties in New York or any other cities in its vicinity, which were made and charged to the account. (R. 30, 120, 122). The Whitney-Central National Bank also accepted time bills in New Orleans, payable at a future date, which were presented to the Hanover National Bank either through the Clearing House or at its counter for certification, which were placed to the debit of the deposit account on the date of maturity (R. 122, 69-71).

Collection of Time Items.

As before stated, these time items were received in the Collection Department of the Hanover National Bank and placed on its records and then presented at the maturity dates to the parties on whom they were drawn and were then, if paid, immediately credited to the deposit account of the Whitney-Central National Bank, and if unpaid, were returned to the Whitney-Central National Bank with the reason for non-payment. (R. 119, 158). The Whitney-Central National Bank put on these items "the ordinary and regular collection indorsement which is the indorsement which every bank puts on items for collection" (R. 158, 159).

Receipt of Deposits in New York for Account of Customers of Defendant in Error, and Payment in New York to Customers there of Defendant in Error.

In certain instances it was the custom of the Hanover National Bank to receive payments from parties, with whom it apparently had no other relations, to the credit of the Whitney-Central National Bank for the account of customers of that bank. For example, on April 2,

1921, (R. 73, 74) J. S. Bache & Co., brokers in New York City, paid the Hanover National Bank \$10,000 for the account of Charles Godchaux, which was placed to the credit of the deposit account of the Whitney-Central National Bank. See also The Guaranty Trust Co.—Anderson, Clayton & Co. transaction, March 2, 1921 (R. 155, 156).

Again, there were cases where the Whitney-Central National Bank would open a credit with the Hanover National Bank in favor of one of the customers of the former, and the customer would draw his check on the Whitney-Central National Bank, and, under the instruction of that bank, the Hanover National Bank would cash the check (R. 46, 47).

It was the custom of the Hanover National Bank to make payment to parties in New York City (presumably customers or payees of customers of the Whitney-Central National Bank) on instructions from the Whitney-Central National Bank (R. 46). An instance of this custom is the V. P. Stokes transaction, April 18, 1921, (R. 78), where the Whitney-Central National Bank by telegram instructed the Hanover National Bank to pay to Stokes, care Hotel Pennsylvania, \$1,000. The latter bank had no account with Stokes and had never heard of him.

Letter of Credit Transactions.

(a) American Exchange National Bank Transaction.

In this matter the Hanover National Bank received what its officer first testified, were instructions from the Whitney-Central National Bank (R. 44) "To issue a letter of credit in favor of a bank here, which letter of credit was issued under the signature of the Hanover National Bank, documents presented and paid for * * * here in New York and the proceeds debited to the ac-

count of the Whitney-Central National Bank by the Hanover National Bank." The same officer later testified that the letter was issued following a telegram from the Whitney Central National Bank to the Hanover National Bank which read:

"Notify and pay to American Exchange National Bank up to \$422,000 upon delivery to you of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse, issued your order, our account, covering six thousand bags Cuban turbinated sugar sold to Bishop Perkins by George Kaiser, Milwaukee: Hold warehouse receipt, further instructions; forward remaining documents to us; advise by wire when paid. Please effect insurance warehouse our account." (R. 121.)

In initiating this transaction, the Hanover National Bank wrote to the American Exchange National Bank under date of May 12, 1920, that it had been requested by the Whitney-Central National Bank to pay the American Exchange National Bank up to \$422,000. "upon delivery of invoice, weight certificate, negotiable warehouse receipt of responsible warehouse issued to our order, account of the Whitney-Central National Bank, New Orleans, La., covering 6000 bags Cuban turbinated sugar sold Bishop, Perkins & Co. by George Keiser, Milwaukee, Wisconsin." The Hanover National Bank added "In advising you as above, we are acting merely as agents for the Whitney-Central National Bank, New Orleans, La., and cannot assume any responsibility for the continuance of their instructions, nor have we any discretion in regard to altering their advices in regard to the documents which are required. Kindly note that we have been requested to effect insurance warehouse, account of The Whitney-Central National Bank" (R. 51, 52).

Under date of May 22, 1920, the Hanover National Bank received from the American Exchange National

Bank, warehouse receipts for 6000 bags of sugar stored in Erie Basin, Brooklyn, against which it paid the American Exchange National Bank \$428,830.84. The goods were placed in storage in the name of the Hanover National Bank and duly insured by the latter (R. 48, 49). The insurance was effected through Johnson & Higgins, insurance brokers, of New York City. Warehouse receipts were from time to time handed by the Hanover National Bank to Farr & Co. of New York City (R. 49). Farr & Co. were the brokers in the case and were apparently the brokers for the purchaser, Bishop C. Perkins & Co. which the defendant in error contends and the plaintiff in error does not dispute was a New Orleans concern (R. 49, 125). The sugars after having been paid for by the Hanover National Bank, remained in New York City, being stored in the name of that Bank, the matter not being closed until December 10, 1920, approximately seven months from the date of the original transaction. Although there was but the one draft presented for payment to the Hanover National Bank accompanied by the documents, there were from time to time several deliveries of the goods thereafter made by the Hanover National Bank. The documents were passed upon by one of the assistants in the Hanover National Bank (R. 50, 51; 66, 67; 130). The Hanover National Bank held at various times fifteen policies either in its own name or transferred to its name covering insurance on this sugar. These policies were all delivered to it in New York (R. 128, 129). The correspondence file of the Hanover National Bank in connection with this transaction alone consisted of upwards of sixty-three letters. (R. 129, 130.)

(b) Anglo-Indian Produce Company, Ltd. Transaction.

In the case of this letter of credit issued to the Anglo-Indian Produce Company, Ltd., the instructions received

by the Hanover National Bank from the Whitney-Central National Bank under date of January 10, 1921, directed the Hanover National Bank to pay to the Anglo-Indian Produce Company, Ltd. \$990 "and also expenses covering ocean freight, insurance and cost of consular papers" relating to 6000 coffee bags (R. 67). Under date of January 13, 1921, the Hanover National Bank (R. 67, 68, 69) advised the Anglo-Indian Produce Company of these instructions, stating that it would pay to it this sum and these expenses on presentation of draft with full set of shipping documents attached covering 6000 coffee bags. It added "In advising you as above, we are acting merely as agent for our correspondent and cannot assume any responsibility for the addition to their instructions, nor have we any discretion as to altering their advices as to the documents required."

Pursuant to these advices, the Anglo-Indian Produce Company, Ltd., under date of January 21, 1921, presented to the Hanover National Bank the documents mentioned in the letter of advice and draft for the purchase price of the merchandise, freight and insurance (R. 68, 69). A representative of the Hanover National Bank passed upon the documents when presented, for the purpose of ascertaining whether they conformed to instructions, and the Hanover National Bank then made payment of the amount of the draft (R. 69).

(c) Schilthuis American Trading Company Transaction.

In this matter a letter of credit was issued under date of May 1, 1920, by the Whitney-Central National Bank in favor of the Schilthuis American Trading Company, containing the clause, not unusual in such cases (R. 30, 37, 40, 106), with respect of drafts drawn under the letter of credit on the Whitney-Central National Bank being payable on presentation at the Hanover National Bank with the documents annexed, specified in the letter of credit

(R. 84, 85). Prior to the presentation of any such drafts, on August 6, 1920 the Whitney-Central National Bank telegraphed the Hanover National Bank to advise it by wire when drafts under this letter of credit should be presented and to make no payments until further advised by the former bank (R. 89, 95). The Hanover National Bank, accordingly, refused payments of the drafts when presented (R. 88-90). The correspondence shows that the Hanover National Bank examined the documents presented with the draft (R. 93), communicated with the Whitney-Central National Bank specifying certain defects asserted to exist in them and on August 10, 1920, telegraphed the Whitney-Central National Bank stating certain modifications, which the Schilthuis American Trading Company was ready to make in the documents and advised the Whitney-Central National Bank to make "amicable arrangements for prompt honoring of draft, otherwise repudiation will have bad effect." In response, the Whitney-Central National Bank pointed out certain defects stated to exist in the documents and instructed the Hanover National Bank to decline payment of drafts until otherwise instructed by it. (R. 96-101). These instructions to decline payment were complied with (R. 88-90). The credit was for \$690,000 (R. 85). A litigation is now pending against the Whitney-Central National Bank in this connection. (R. 91).

(d) Carlos, Alfret & Company Transaction.

In this matter the Hanover National Bank was instructed under date of June 29, 1920, by the Whitney-Central National Bank to pay drafts of Carlos, Alfret & Company when that house presented invoices, consular invoices and negotiable bills of lading evidencing shipment of certain sugar (R. 102, 103). Pursuant to these instructions, under date of June 30, 1920, the Hanover National Bank paid out to Carlos, Alfret & Company

\$54,900 upon the presentation of the documents, consisting of bills of lading, consular invoices and invoice (R. 103). The bills of lading covering the merchandise on receipt were forwarded by the Hanover National Bank to the Whitney-Central National Bank (R. 103). Upon the day of presentation of the documents, the Hanover National Bank telegraphed to the Whitney-Central National Bank pointing out various defects or alleged defects and omissions in the documents, and important exceptions contained in the bill of lading, and called for instructions as to whether or not the Hanover National Bank should pay (R. 103). The official of the Hanover National Bank, who testified, stated that it was the practice of his Bank to examine carefully such documents and that it was the duty of his Bank to its principal and its practice as well to draw such omissions, changes or defects to its attention (R. 103, 104).

(e) Arnold, Dorr & Company Transaction.

In this matter a draft for \$6,500, drawn under a letter of credit issued by the Whitney-Central National Bank, was presented to the Hanover National Bank for payment February 7-9, 1921, against a shipment from Calcutta to be made in November, 1920, and payment was refused, pursuant to instructions received from the Whitney-Central National Bank so to do, if in the judgment of the Hanover National Bank sufficient proof was not furnished that the goods were shipped within the time stated. (R. 110-111). The following are the instructions which the Hanover National Bank received from the Whitney-Central National Bank (*italics ours*):

“Our customer advises us that they are informed by Messrs. Arnold, Dorr & Co. that the goods shipped under the above credit are on the steamship City of Brisbane which sails from Calcutta December 13, 1920. We therefore request you kindly have Arnold, Dorr & Co. *furnish suffi-*

cient proof that the goods were shipped within the time stated;" (R. 110-111).

(f) Nottebohm Bros. Transactions.

In this case there were three different letters of credit issued by the Whitney-Central National Bank; one for \$13,300 (R. 104-105), one for \$20,500 (R. 106-107), and the third for \$13,500 (R. 109). The drafts were drawn on the Whitney-Central National Bank "payable with your good selves," meaning Hanover National Bank of New York, upon presentation of certain specified documents (R. 106-107-108), which were presented to the Hanover National Bank respectively March 20, 1920 (R. 105); in March and April, 1920 (R. 107), and in March, 1920 (R. 109). The documents were forwarded on receipt to the Whitney-Central National Bank (R. 105).

In one of these transactions (R. 109) the Hanover National Bank advise the Whitney-Central National Bank by telegram of discrepancies in the papers presented.

(g) Ham & Seymour Transactions.

The counsel for the plaintiff in error offered to make proof of letter of credit transactions, and in connection with them instructions from the Whitney-Central National Bank to the Hanover National Bank relative to the payment or non-payment of drafts under such letters of credit, which recited that such drafts would be payable at the Hanover National Bank of New York City. The Master, however, at that point excluded them, but stated that counsel might present his motion again at the end of all the testimony. (R. 81, 82). Later, counsel for the plaintiff in error offered to prove (R. 131, 132) that the Whitney-Central National Bank under date of April 17, 1920, issued its two letters of credit,

Nos. 4433, 4434, to Messrs. Ham & Seymour of New York City, N. Y., in a form specified in the offer, each in the sum of \$246,400. The authorization contained in the letters of credit, according to the offer of proof, was

“To value on the Whitney Central National Bank, New Orleans, at sight, payable at the Hanover National Bank, New York.”

It was provided by the letters of credit, as shown in the offer, that the drafts must be drawn and bills of lading dated in New York prior to December 15, 1920, and advice given to be accompanied by the bills of lading and other documents mentioned.

The offer was further to prove that the Hanover National Bank was notified by the Whitney-Central National Bank of both of said letters of credit and their terms, and that in the months of October, November and December, 1920, drafts in the aggregate amount of the letters of credit, reciting that they were drawn under the said letters of credit, were drawn by Ham & Seymour to the order of The Bank of America and accompanied by certain documents were presented by The Bank of America for payment at the Hanover National Bank, and payment of said draft was refused by that Bank stating that it was acting under telegraphic instructions from the Whitney-Central National Bank (R. 132, 133), but the objection of counsel for the defendant in error to this offer was sustained solely on the ground that it was cumulative (R. 132, 133).

Purchase and Sale of Securities.

The evidence establishes that twice during the month of January and once during the month of March, 1921, J. S. Bache & Company, stock and commodity brokers of New York City, members of the New York Stock Ex-

change (R. 139), were instructed by the Whitney-Central National Bank, first by wire, confirmed later by letter, to sell government bonds for the account of the Whitney-Central National Bank in the open market (R. 140-143); that they did so, and that later in each case the bonds which were the subject of sale were forwarded by the Whitney-Central National Bank to the Hanover National Bank in New York City, and that the latter for the account of the Whitney-Central National Bank made delivery of these bonds to J. S. Bache & Company against payment of the purchase price of the bonds (R. 140-143).

The Whitney-Central National Bank was also accustomed to send instructions from time to time to the Hanover National Bank to receive from parties in New York securities and pay for them to the debit of the deposit account of the Whitney-Central National Bank. (R. 122).

Under date of March 22, 1921, the Whitney-Central National Bank sent to the Hanover National Bank a certificate for 50 shares of Gulf Oil Corporation, and enclosed the draft of the Whitney-Central National Bank on Messrs. Hoyt & Company, 71 Broadway, New York City, in the sum of \$3,451, upon payment of which the Hanover National Bank was to deliver the shares of the Gulf Oil Corporation to Messrs. Hoyt & Company and have the remaining shares issued in the name of one Read, in whose name stood the certificate for 50 shares, which remaining shares were to be returned to the Whitney-Central National Bank and its account credited with the proceeds. These instructions were carried out. (R. 116.)

On April 15, 1921, the Whitney-Central National Bank sent to the Hanover National Bank temporary certificates for 2,000 shares of the stock of Carson Petroleum Company with instructions to have them changed for permanent stock certificates for 100 shares each in

the name of Charles E. Smith, and to return the same to the Whitney-Central National Bank with memorandum of any costs in the matter (R. 157).

*Receipt and deposit of securities for the
defendant in error.*

On April 13, 1921, at the time of the service of summons, the Whitney-Central National Bank of New Orleans had on deposit with the Hanover National Bank, known as a special deposit, certain securities in the name of one of the clients of the Whitney-Central National Bank, which the Hanover National Bank was holding subject to the Whitney-Central National Bank's instructions. It consisted of stock subject to the order of the client of the Whitney-Central National Bank. They had been held from February 18, 1918, and were received from Emanuel Parker & Co. in New York, by hand, for the account of the Whitney-Central National Bank. There had been several substitutions after that date by order of the Whitney-Central National Bank which were made by hand. (R. 35, 36).

The sale of acceptances by the Whitney-Central National Bank in New York City and the service of the summons in this action on its President while in said City in relation thereto.

A bank acceptance is a negotiable draft drawn usually at 60 or 90 days, issued by a bank in one place on another bank in some other city in the United States. The bank upon which the draft is drawn, upon presentation accepts it, takes from it any documents which may be attached and returns the draft to the presenting bank, which keeps it or negotiates it. The acceptance is an accepted draft (R. 34).

On April 13, 1921, the day that process was served in this action, Mr. Bouden, the President (R. 3, 4, 13, 14, 15, 27, 153, 154, 159, 145) of defendant-in-error, the Whitney-Central National Bank, was engaged for approximately one hour at the place of business of the Federal Reserve Bank of New York, 15 Nassau Street, New York City, in a conference with Mr. Kenzel, a Deputy Governor of and Comptroller of Investments for the Federal Reserve Bank, of New York, the official who has general supervision of the entire investment policy of that bank (R. 144, 145, 146, 153, 154). The Federal Reserve Bank of New York is engaged and was so engaged on April 13, 1921, in the business, *inter alia*, of purchasing bank acceptances offered to it by discount houses and by banks (R. 145). Sometime prior to the date last mentioned this Bank had declined to purchase acceptances of the Whitney-Central National Bank. It seems that The Bank of America, the plaintiff herein, had communicated to Mr. Kenzel that there was a pending controversy between it and the Whitney-Central National Bank with respect of the refusal of the latter to honor certain drafts (R. 149). As a result of this communication, Mr. Kenzel caused inquiries to be made through appropriate channels with respect of the whole controversy, and his action relative to the declination to purchase the acceptances of the Whitney-Central National Bank was determined as the result of those inquiries (R. 150). Afterwards and a day or two before April 13, 1921, Mr. Bouden came to New York. Apparently he was aware of the attitude of the Federal Reserve Bank of New York with regard to the purchase of acceptances of the Whitney-Central Bank in this city, and had sought "a mutual friend", Mr. Alexander, the President of the National Bank of Commerce, one of the correspondents in New York City of the Whitney-Central National Bank (R. 151), who happened also to be a Director of the Federal

Reserve Bank of New York (R. 152). Mr. Alexander the intermediary, came to Mr. Kenzel and told him that Mr. Bouden was in New York and wished to talk to Mr. Kenzel about this matter, and asked if that would be agreeable to the latter. Mr. Kenzel answered in the affirmative and after a day or so Mr. Bouden came in with a card of introduction from Mr. Alexander (R. 151). Mr. Kenzel testified that Mr. Alexander knew nothing of this whole matter until Mr. Bouden discussed it with him preliminarily to the making of the arrangement to see Mr. Kenzel (R. 152). He further testified that Mr. Bouden called to discuss with him the status of the bills of the Whitney-Central National Bank in the New York market, which Mr. Bouden said he felt had been adversely affected as a result of the controversy in question (R. 146). Mr. Bouden complained to Mr. Kenzel of the adverse effect on the bills of his Bank, if the Federal Reserve Bank of New York would not purchase them nor discount them (R. 146, 147). Mr. Kenzel explained to him that probably it was the outside market more than the Federal Reserve Bank of New York, which would reflect any marked attitude toward the paper of his bank, to which Mr. Bouden replied (R. 146, 147):

“But you are the only man in New York who has an understanding of this thing, and can correct any adverse market condition, because of your position here in the bank, and the position which the bank occupies toward the market.”

Mr. Kenzel suggested to Mr. Bouden that it might be a good thing for him to discuss this claim with his correspondents, and Mr. Bouden, in compliance with that suggestion, indicated that he was going to see one of them in particular (R. 147).

Then, a few minutes after the termination of this conference and immediately after leaving the premises of the Federal Reserve Bank, Mr. Bouden was served with the summons in this action (R. 153, 154, 159, 13, 3).

*Errors in the Admission and Failure to Reject Evidence
Before the Special Master.*

As before shown (R. 81, 82, 131, 132, 133) the Special Master refused to permit evidence, on the ground that it was cumulative, of the issuance by the Whitney-Central National Bank of letters of credit in favor of Ham & Seymour for the payment of drafts of the Whitney-Central National Bank payable at the Hanover National Bank in New York City, and the presentation of such drafts by the Hanover National Bank, and the refusal to pay under instructions from the Whitney-Central National Bank.

Evidence also was introduced on cross-examination on behalf of the defendant in error, that the Hanover National Bank had over four thousand deposit bank accounts, similar to that of the Whitney-Central National Bank with it, of banks which were located in every State of the Union, and nearly every city of any size in every State, which accounts were handled in the same fashion according to the business sent by the correspondents to the Hanover National Bank, some localities sending a different class of business from another (R. 119). In reply, also, to questions put by the Master and by counsel for the defendant in error, the witness was permitted to answer that the practice or condition with correspondent banks, as given in evidence, was, and had been for many years, common in banking practice, and had prevailed more before the Federal Reserve System was in force; that letters of credit had been handled more by banks in the inland in the last ten or fifteen years, but it was a common practice all over the country to handle letters of credit similar to the manner in which the Hanover National Bank was handling the Whitney-Central National Bank letters of credit, and that the instances which were referred to in connection with the testimony, were typical of all transactions that the Han-

over National Bank handled for other banks (R. 133, 134). Counsel for the plaintiff in error moved to strike out, as irrelevant and immaterial, all of the foregoing testimony, which motion was denied by the Master and exception taken thereto (R. 160).

Specifications of Error.

The assignments of error are set forth in full in the record (R. 177-182). Briefly specified, the errors complained of are in substance:

(1) That the Court did not find or decide that on the 13th day of April, 1921, the defendant was and therefore had been doing business in the Southern District of New York, in the State of New York, of such a nature as to subject it to the service of process in this action on its president in said Southern District of New York (Assignments of Error 1, 2, 3 and 4), and that the Court had jurisdiction of the defendant.

(2) That the Court did not find and decide that the delivery of the copy of the summons on April 13, 1921, to John E. Bouden, Jr., the president of the defendant, in the Southern District of New York constituted a valid service of the summons in this action and subjected the defendant to the jurisdiction of the Court (Assignments of Error 5 and 6).

(3) That the Court erred in failing to deny the motion to set aside the service of the summons (Assignment of Error 11).

(4) That the Special Master and the Court refused to permit the plaintiff, upon the ground that it was cumulative, to prove or attempt to prove, that under date of April 17, 1920, the Whitney-Central National Bank issued its two letters of credit to Ham & Seymour of New York City, New York, whereby they were authorized to value on the Whitney-Central National Bank at sight,

payable at the Hanover National Bank at New York, not exceeding in the aggregate \$246,000 in each case, to be used for the invoice cost of certain Java white sugar, and wherein the drafts were to be drawn for these sums and bills of lading to accompany the drafts; and to prove or attempt to prove, that the Hanover National Bank was notified by the Whitney-Central National Bank of both of said letters of credit and of their terms (Assignment of Error 7).

(5) That the Special Master and the Court refused to strike out as irrelevant and immaterial, and the Court failed to so disregard as irrelevant and immaterial, the testimony of the witness Suydam, that the Hanover National Bank had over four thousand deposit bank accounts, similar to that of the Whitney-Central National Bank with it, of banks which were located in every State in the Union and nearly every City of any size in every State, which accounts were handled in the same fashion according to the business sent by its correspondents to the Hanover National Bank, some localities sending a different class of business from other localities, (Assignment of Error 9); and the further testimony of said witness that the practice or condition with correspondent banks, as given in evidence, was and had been for many years common in banking practice and had prevailed more before the Federal System was enforced; that letters of credit had been handled more by banks in the inland in the last ten or fifteen years but that it was a common practice all over the country to handle letters of credit similar to the manner in which the Hanover National Bank was handling the Whitney-Central National Bank letters of credit, and that the instances which were referred to in connection with the testimony were typical of all transactions that the Hanover National Bank handled for other banks (Assignments of Error 8).

(6) That the Court regarded as material and relevant the aforesaid testimony, which was immaterial and irrelevant.

BRIEF OF THE ARGUMENT.

We present the following points:

- (1) At the time of service of process herein and for a considerable time prior thereto, the defendant bank was transacting business in the City and State of New York, in such manner and to such extent as to make it subject in this action to service of process on its president in the Southern District of New York.

Phila. & Reading Ry. Co. *vs.* McKibbin, 243 U. S. 264, 265;

St. Louis, S. W. Ry. *v.* Alexander, 227 U. S. 218;

International Harvester Co. *v.* Kentucky, 234 U. S. 579;

Commercial Mutual Accident Co. *v.* Davis, 213 U. S. 245;

Sternaman *vs.* Metropolitan Life Insurance Co., 170 N. Y. 13, 21;

Evansville Bank *v.* German American Bank, 155 U. S. 556;

Sales *v.* United States, 234 Fed. Rep. 842;

In re Jarmulowsky, 249 Fed. Rep. 319;

Barrow Steamship Co. *v.* Kane, 170 U. S. 100;

International Text Book Co. *v.* Pigg, 217 U. S. 91;

Lumbermen's Insurance Co. *v.* Meyer, 197 U. S. 407;

Connecticut Mutual Life Insurance Co. *v.* Spratley, 172 U. S. 602, 619;

Railroad Company *v.* Harris, 12 Wall. 65, 83;

- (2) At the very time of the service of the summonses herein the president of the defendant bank was transacting its business in the State of New York.

Smith v. Hickey, 25 N. Y. App. Div. 105, at 106.
Dutton v. Smith, 23 N. Y. App. Div. 188, at p. 190.

Wigmore on Evidence, Vol. 1, Sec. 290, Subdivision 4.

Commercial Mutual Accident Co. v. Davis, 213 U. S. 245.

- (3) The transactions which the defendant's correspondents have conducted for it as its agents in New York City have been of a class which may legally be performed by a national bank at a place other than its home office.

National Bank Act, §§5190, 5134, 5136.

Merchants Bank v. State Bank, 10 Wall. 604.

- (4) The District Court had jurisdiction of this action under Section 24 of the Judicial Code.

United States Rev. Stats., §§563, 629, 5197, 5198;
Act of Congress, Feb. 18, 1875 (Ch. 80, 18 Stat. 316);

Judicial Code, §24.

Act of Congress, July 12, 1882, §4 (Ch. 290, 22 Stat. 162);

First National Bank vs. Williams, 252 U. S. 504;

First National Bank Act, Feb. 25, 1863, §59 (Ch. 58, 12 Stat. 665);

Second National Bank Act, June 3, 1864, §57 (Ch. 106, 13 Stat. 99);

Kennedy v. Gibson, 8 Wall. 498;

Cooke v. State National Bank of Boston, 50 Barb. 339; 62 N. Y. 96;

- Talmadge v. Third National Bank*, 91 N. Y. 531;
Main v. Second National Bank of Chicago, 6
 Bliss. 26;
New Orleans National Bank v. Adams, 3 Woods
 21;
Adam & Co. v. Daunis, 29 La. Ann. 315;
Crocker v. National Bank of N. Y., 101 Mass.
 240;
Cadle v. Tracy, 11 Blatchf. 101;
Manufacturers' National Bank of Chicago v.
Baach, 8 Blatchf. 137;
St. Louis Bank v. Allen, 5 Fed. 551;
Petri v. Commercial National Bank, 142 U. S.
 644, 649;
Leather National Bank v. Cooper, 120 U. S. 778;
Ex Parte Jones, 164 U. S. 691;
Continental National Bank v. Buford, 190 U. S.
 119;
Bankers Trust Co. v. Texas & Pacific Ry. Co.,
 241 U. S. 295;
 Act of Congress, March 3, 1887, §4 (Ch. 8, 373,
 24 Stat. 554);
 Act of Congress, Aug. 13, 1888, §4 (Ch. 886, 25
 Stat. 436);
Charlotte National Bank v. Morgan, 132 U. S.
 141, 149.
First National Bank v. Union Trust Co., 243
 U. S. 416;
American Bank & Trust Co. v. Federal Reserve
Board, 256 U. S. 350.

I.

At the time of service of process herein and for a considerable time prior thereto, the defendant bank was transacting business in the City and State of New York, in such manner and to such extent as to make it subject in this action to service of process on its president in the Southern District of New York.

The basic question to be determined by this Court upon this writ of error is whether the defendant bank at the time of the service of process was doing business within the State of New York

“in such manner and to such extent as to warrant the inference that it is present there”.

Phila. & Reading Ry. Co. vs. McKibbin, 243 U. S. 264, at page 265.

The motion by the defendant to set aside the service of the summons squarely raised the issue of fact that the defendant was not at any time doing business within the State of New York, and indeed this was substantially the only issue of fact in controversy (R. 13, 161). That question was referred to a Special Master to take proofs and report the same with his findings thereon (R. 25, 163).

The Special Master's report summarized the transactions proven by the evidence offered before him in the main as set forth in the foregoing statement of the facts. Having done so, he set forth a conclusion of fact, drawn from that evidence, in the following language (R. 168):

“The transactions set forth in the summary above certainly constitute the doing of business, and, in part, the doing of business here.” (Italics ours.)

The remainder of the learned Special Master's report consists in argumentative matter suggesting

that to his mind the transactions which he necessarily found constituted the doing of business in New York are merely such as are customary between a bank in one locality and its correspondent banks elsewhere; further that inasmuch as there is apparently no recorded authority holding a bank amenable to process in the jurisdiction of its correspondent, this case is one of novel impression, and hence, it would be better for the Court at *nisi prius* to decline jurisdiction in order to save the possible delay and expense which might result if a contrary determination were reversed by this Court.

The Special Master having, as above stated, found that the defendant Bank was doing business—at least in part—in the State of New York, the sole remaining question is as to whether that business was of such a nature and extent as to subject it to the jurisdiction of the United States District Court for the Southern District of New York, in an action commenced by the service of process upon defendant's President while concededly upon its business in that District.

It is true that the authorities quoted and cited by the Special Master in his report (R. 161, 162) indicate that no entirely satisfactory or scientific definition of what may be sufficient to constitute the "doing of business" in a given state has ever been formulated and that this Court has several times indicated that each case should be decided upon its own facts.

St. Louis, S. W. Ry. v. Alexander, 227 U. S. 218;

International Harvester Co. v. Kentucky, 234 U. S. 579;

Philadelphia & Reading Ry. Co. v. McKibben, 243 U. S. 264.

Proof of sufficient transactions to warrant the inference that the corporation has subjected itself to the jurisdiction of or has manifested its presence within the

State has been held sufficient, but just what precise acts constitute such subjection to jurisdiction or manifestation of presence has never been made the subject of any judicial formula. In certain cases it has been held that one solitary or sporadic transaction within the foreign state is not sufficient. (But see *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245). The underlying principle of these decisions seems to be that a few merely accidental or unrelated transactions are not enough. The business must be of a more or less settled and continuous character so that it may be said that the defendant corporation is enjoying, to that extent, the protection of the laws of the foreign state and the advantage of having some part, at least, of its regular business transacted either directly by it or by others in its behalf within the geographical confines of such foreign state.

The narrower and more specific question to be decided by this Court, therefore, is whether a bank situated in one state, which continuously, and over a period of years, conducts a series of banking transactions of the character disclosed by the record in another state through six correspondent banks located in that state, is transacting business within the latter state so as to make it amenable to process in an action brought against it in a local court by a citizen of that state.

The Special Master, as indicated by his report, seemed to consider the transactions which he had summarized, with the exception of what he termed certain "sporadic" ones, to be usual transactions between a bank in one locality and its correspondent banks elsewhere. In this connection, however, he concedes that the business of banking is not confined to the holding of the money of the bank's depositors and paying it out on their drafts when presented at the bank's office, nor to discounting negotiable paper at such office. He further concedes that a bank of any importance must have correspondent banks in other places and that "*this involves the doing of many*

things which cannot be wholly done in the place where the bank is officially located” (R. 168-169). Nevertheless, his suggestion that it would be wise, in the first instance, to decline jurisdiction in this case, (apparently adopted by the District Court in granting, without opinion, the defendant’s motion) seems to have been largely influenced by the testimony of the witness Suydam, Vice President of the Hanover Bank, that the Hanover Bank has four thousand correspondent banks throughout the United States. This testimony plaintiff’s counsel moved to strike from the record as irrelevant and immaterial (R. 160) and the denial of that motion and the admission of that testimony (duly excepted to, *id.*) is made, as previously stated in this brief, the subject of assignments of error Nos. 9 and 10.

Upon this testimony our opponent based his main argument in the court below. Paraphrased and in skeleton form that argument may be stated as follows:

“It is true that the defendant has six correspondents in New York and had practically daily transactions with them involving many hundreds of thousands of dollars, but so does nearly every out-of-town bank of any importance throughout the United States; hence, if such transactions constitute the doing of business on defendant’s part in the State of New York, then all these other banks are also doing business within the State of New York.”

Parenthetically, we submit that this contention, as well as all of the testimony in support of it which the witness Suydam strained in every way to inject into his answers upon direct examination, is entirely irrelevant.

On cross examination he described the practice of the defendant bank of sending to the Hanover from time to time its letters enclosing checks or other negotiable instruments, coupons and other items for collection and credit to the account of the defendant bank (R. 118, 119).

He then testified that his bank had over 4,000 "similar" bank accounts. Counsel for defendant then asked him whether all of these accounts were handled in the same fashion as the Whitney-Central National Bank (R. 119, XQ. 466), to which he answered as follows:

"They are all handled in the same fashion according to the business they send us. Some localities will send a different class of business than others."

There was no attempt on the part of the witness to testify that for any other non-New York bank the Hanover had ever transacted business of the varied and extensive character that it transacted for the Whitney Central National Bank. No attempt was made to show on cross examination, for example, that the Hanover had ever acted for any bank as it did for the defendant bank in the American Exchange National Bank letter of credit transactions to which we shall allude more fully hereafter. Of course, other banks sent negotiable instruments, drafts, etc., for collection; and undoubtedly still others may have made their acceptances or drafts drawn under their respective letters of credit payable at the Hanover, but the record is barren of any instance where any one out-of-town bank, other than defendant bank, handled through the Hanover such a conglomeration of transactions of every kind and nature as the Whitney Central Bank.

Irrespective of the foregoing, however, of what relevance are these transactions by other banks? The question before the Master was not whether *they* were doing business in New York, but whether the *defendant bank* was doing business in New York. Let us assume for the sake of argument that each of them was transacting through New York correspondents as varied and important business as the defendant bank, and therefore that all of them are doing business within the State of New

York. Does that in any way diminish or alter the legal effect of what the *defendant* bank was doing?

It is a matter of common knowledge that New York City is the financial centre of the United States. If, as a result, large banks situated in other important cities throughout the country find it desirable or profitable, either directly or through correspondent banks, to transact there business of substantial importance, or enter into contracts through such correspondents in the State of New York with banks and other citizens of that State, why should they not be subject to the jurisdiction of the federal and state courts of New York, when service can otherwise be duly made upon their officers while therein?

The answer to the argument, that if this Court hold that the defendant bank was doing business in the State of New York then necessarily many other non-New York banks must be held to be doing business there, is: Why shouldn't they be, if they *are* doing business of the same character and extent as the defendant bank? The same argument might have been and doubtless was made to this court in the Insurance cases hereafter referred to (*post*, pp. 47, 48, 51) but the fact that those decisions would and did apply to almost every large insurance company in the country did not affect this court or deter it from holding that the Insurance Companies were subject to process.

The only support by way of precedent for its argument which was advanced in the Court below or is suggested in the Special Master's report, consists of an isolated sentence to be found in the opinion of this Court in the case of *Philadelphia & Reading Railway Company vs. McKibbin*, 243 U. S. 264, at page 268. Stated as concisely as possible, there the decision was merely that the sale in the City of New York by the Central Railroad of New Jersey of coupon tickets over its own and connecting lines which included among others the Philadelphia & Reading, as a result of which the latter Railroad re-

ceived upon ultimate accounting between the various carriers that portion of the fare paid for the journey over its own line, did not constitute in itself the transaction of business in the State of New York by the *Philadelphia & Reading Railway Company*. In the course of its opinion this Court, after stating that "obviously the sale by a local carrier of through tickets does not involve a doing of business within the State by each of the connecting carriers", remarked:

"If it did, nearly every Railroad Company in the country would be 'doing business' in every state." *Id.* p. 268.

Upon the foundation of this single sentence the defendant bank has erected practically its entire argument, and has sought thereby to justify the introduction in evidence of the testimony, admission of which by the Special Master has been made the subject of Assignments of Error 8 and 9.

When the opinion in the McKibbin case, however, is considered in its entirety, the sentence above quoted is deprived of the special force and significance thus sought to be attached to it. The Central Railroad of New Jersey was not selling tickets in New York City for the benefit of the Philadelphia & Reading; it was selling tickets in its *own* behalf. Of course, in order to give its passengers the through service they required it was obliged to sell through tickets which called for transportation over the lines of connecting carriers, and it is true that in the final accounting between the carriers, as above pointed out, the Philadelphia & Reading received whatever credit it was entitled to. This fact did not make the Jersey Central the agent and representative within the State of New York of each of the connecting carriers. It needs no argument to demonstrate the fact that if A, residing in New York, requests the telephone operator of the New York Telephone Company to call up B, resid-

ing in Missoula, Montana, and the New York Telephone Company establishes the connection finally over the wire of the "Home Telephone Company" of Missoula, the New York Telephone Company is not the agent of the Home Telephone Company, nor can the latter in any sense be deemed to be transacting business in the State of New York. In the McKibbin case it was evident that the business which was done was done by the Jersey Central Railroad on its own initiative and in its own behalf and not as agent in any sense for the Philadelphia & Reading Railway Company. Had the facts been such as to establish that the business was transacted by the Central Railroad as agent, there can be no doubt that under *Barrow Steamship Co. v. Kane*, 170 U. S. 100, the conclusion would have been that the Reading Company was itself doing business in New York and suable in its courts. Indeed, such was the conclusion of this court in *St. Louis, Southwestern Railway Co. v. Alexander*, 227 U. S. 218, where the fact was that the foreign railroad corporation was doing business in New York through an agent.

See also

International Harvester Co. v. Kentucky, 234 U. S. 579;

International Text Book Co. v. Pigg, 217 U. S. 91;

Commercial Mutual Accident Co. v. Davis, 213 U. S. 245;

Lumbermen's Insurance Co. v. Meyer, 197 U. S. 407.

In the case at bar there is no question but that in conducting the various transactions heretofore set forth the Hanover Bank and the defendant's five other correspondent banks were acting not in any sense in their own behalf or in connection with business initiated by

them and to which the defendant bank was simply an adjunct, but primarily, indeed solely, for and in behalf of and in the interest of the defendant bank itself and subject to the latter's complete and specific direction from start to finish. Herein lies the basic distinction between the case at bar and the McKibbin case.

We repeat, therefore, that the question as to how much or what kind of business other non-New York banks have been or may now be doing in the State of New York is entirely irrelevant.

In the Court below, it was contended that all of the business proved to have been transacted amounted to nothing more than the maintenance by the defendant bank of a number of bank accounts in New York City. The next step in the argument was that the mere maintenance of a bank account by the citizen of one state with a bank in another state did not constitute the transaction of business by the former in the latter state. This argument is also reflected in the report of the Special Master. It is not necessary for us to contend, nor did we do so in the Court below, that the maintenance only of a bank account in a foreign state and the drawing of checks or drafts on that account, payable in that state, constitutes "doing business" therein. Even when (as in the case at bar) there are maintained by one institution as many as six such bank accounts in the foreign state—surely an extraordinary number for one transacting no business there—although the question is not so clear, we still do not need to claim that this alone constitutes "doing business" there. But when, superimposed upon these every day debtor and creditor transactions we find, as in the instant case, a volume of *other* and *different* transactions which necessarily created the important, additional relationship of *principal* and *agent*, it is impossible to resist the conclusion that the defendant was doing business in New York, and business of considerable magnitude and variety.

We submit that when the defendant bank in its letters of credit agreed with whomsoever might become the holder of drafts drawn under same, that such drafts, with accompanying documents, might be presented for payment at the Hanover National Bank in New York City, and when it instructed that Bank to act as such payee, it went far beyond the ordinary debtor and creditor relationship. Its instructions in such case imposed upon the Hanover National Bank the duty not merely, as in the case of the ordinary check or draft, to verify the genuineness of its signature, but also to examine and pass upon the documents, which constituted the defendant bank's security, and which, upon payment of such drafts, became its property. The evidence discloses with what meticulous care this duty was performed by the Hanover National Bank. The latter was required to and did assume serious responsibilities; in the American Exchange National Bank instance (*ante*, pp. 7-9) it even went so far as to store and insure in its own name the goods themselves, maintaining custody of them for several months, even making deliveries from time to time of various portions thereof as released in accordance with its principal's instructions. When the Hanover National Bank received securities from the defendant bank and delivered them to the latter's brokers (R. 73, 74) and conversely when it made payments to various parties here for securities and received same from such parties for delivery to the defendant (R. 122 A to XQ 483); when it received from third parties securities for the account of the defendant bank and held them for several years on deposit (R. 35, 36), making from time to time substitutions in these securities (R. 36 A to Q 107); when it cashed checks, under specific instructions from the defendant bank it is true, but drawn by third parties with whom it had no banking or deposit relations of any kind, which checks were drawn not upon it but upon the de-

fendant bank; when it received from third parties with whom it apparently had no banking relations, deposits of moneys for the account of customers of the defendant bank (See R. 73, 74, 155, 156, Anderson, Clayton & Co. and Godchaux transactions), thereby to all intents and purposes acting as the *alter ego* of the defendant bank in receiving deposits for the credit of its customers,—it passed far beyond the position of a mere debtor; it became in truth and in law, for all purposes of these transactions, the Whitney Central National Bank itself.

Had the defendant bank rented a small space in the office of the Hanover National Bank, put up a sign inscribed with the words "Whitney Central National Bank", and paid one of the clerks of the Hanover a salary for attending to this business for its account, could there be any question in even the narrowest mind that it would be "doing business" within the State of New York? Is the legal effect of what it did through the Hanover, and to a lesser degree through five other banks in New York City, *without* this outward paraphernalia, any different? Is the *advertisement* of the pater-nity of the transactions to be the test, or the transactions themselves? Why *should* the defendant bank incur the expenses of an office and a salaried representative in New York City, when it could, without cost, get precisely the same representation and the same service and transact the same business through the Hanover National Bank and its five other correspondents? The consideration to the Hanover and the others was of course the maintenance of a substantial bank account in New York.

Letter of Credit Transactions
(ante pp. 7 *et seq.*)

In notifying the American Exchange National Bank of its agency in behalf of the defendant bank, in connec-

tion with the letter of credit in making payment thereunder, in passing upon the documents presented at the time of such payment and, thereafter, in receiving various warehouse receipts, in storing the goods in its own name, in effecting insurance thereon in its own name and receiving and paying the necessary premiums required by the fifteen policies evidencing such insurance, in making deliveries from time to time to the New York agent of the purchaser throughout the entire seven months' period covered by these transactions, the Hanover was unquestionably acting under the instructions and as agent for the defendant bank. It clearly defined at the outset in its original letter on May 12, 1920, to the American Exchange National Bank, its own relation to this matter in the following words:

"In advising you as above, we are acting merely as agents of the Whitney Central National Bank of New Orleans, and cannot assume any responsibility for a continuation of their instructions, nor have we any discretion in regard to offering (altering) their advices in regard to documents which are required." (R. 52).

See also concluding paragraph of the letter of the defendant bank to the Hanover Bank of December 10, 1920, marking the close of the business as follows:

"Wishing to assure you of our high appreciation of your very courteous and efficient attention to *our interests*" (R. p. 66).

Can there be any question but that throughout this entire period in conducting these transactions the Hanover National Bank was doing business in the City of New York for, in behalf, and even in the name of the defendant bank? It acted not for itself but in a purely representative capacity and under authority derived from the defendant bank. The facts fit perfectly the

definition of the relationship of principal and agent, stated by the New York Court of Appeals, as

“a legal relation by virtue of which one party, the agent, is employed and authorized to represent and act for the other, the principal, in business dealings with third persons. The distinguishing features of the agent are his representative character and his derivative authority.” *Sternaman vs. Metropolitan Life Insurance Co.*, 170 N. Y. 13-21.

And if in doing such business the Hanover Bank was acting solely as agent for the defendant bank, and attending to *its* interests, must it not necessarily follow that the Whitney Central National Bank was doing business within the jurisdiction? Although the goods were stored in the name of the Hanover Bank, this was solely for the account of the defendant bank. Had they been converted or destroyed, the defendant bank would have been a proper party plaintiff in the New York courts for the resultant damage. The defendant throughout this entire transaction enjoyed the benefits and protection of the laws of the State of New York exactly to the same extent as any New York citizen. Why, therefore, should it not be considered in the legal sense, *there present* so far as jurisdiction of the local courts in suits against it is concerned? Had the Hanover refused to make due payment upon proper presentation of documents (its authority to contract being undisputed and the fact of its agency and the name of its principal having been disclosed) an action could have been maintained by the American Exchange National Bank directly against the Whitney-Central National Bank. Upon the defendant's theory, however, in spite of the presence there of any one or more of the defendant's officers, process in such an action could not have been validly served upon any one of them, but the American

Exchange National Bank would have been obliged to undergo the hazard and expense of instituting its action in the courts of Louisiana. In other words, the defendant, protected by New York laws and free to exercise its rights through New York courts, would be exempt from corresponding liability to suit against it in New York. In this contention there is no inherent justice. The "due process of law" amendment to the Constitution was enacted to *promote*, not to circumvent or delay justice.

We shall not prolong this brief by discussing each instance contained in the record where the defendant bank, through its agent, the Hanover National Bank, conducted its letter of credit business in New York, as these instances have been set forth at length in our statement of facts, and also to some extent in the Master's report (R. 166 and 167). We do wish, however, to call attention to another aspect from which the relationship of the Hanover Bank to the defendant bank in carrying out the terms of the latter's instructions in connection with letters of credit was clearly that of agency. In a number of instances, for example, those of the Nottebohm drafts, payment was to be made by the Hanover Bank on receipt of copies of bills of lading and other shipping documents (R. 106-108). When the Nottebohms presented their drafts against the defendant at the Hanover Bank, accompanied by shipping documents and bills of lading made out to the Whitney Central Bank in accordance with its letter of credit, and the Hanover Bank paid the drafts and took the documents, title to the coffee covered by the bill of lading passed to the Whitney Central Bank. The delivery by the seller of the bill of lading and other documents at the instance of the buyer to a party designated by the buyer constitutes delivery to the buyer. This is on the same principle that delivery to a carrier selected by a purchaser is

delivery to the purchaser because the carrier is his agent. If a loss of the coffee through peril of the sea or otherwise, had taken place after the Hanover Bank paid the draft and received the shipping documents, the loss would have fallen neither upon the seller nor the Hanover Bank, but upon the Whitney Central Bank.

If it had been the custom of the Hanover Bank to hold the documents of title, after paying the drafts, until reimbursed by the Whitney Central Bank, it might be argued that the Hanover Bank received a security title to the merchandise. It was, however, as the evidence shows, the custom of the Hanover Bank to charge the Whitney Central's deposit account and forward the documents at once (R. 103, 105, Qs. 375, 387). If the Hanover Bank did not receive the documents as agent for the defendant, in what capacity did it receive them? Certainly not as agent for the drawer of the draft, for the Hanover Bank was designated by the Whitney Central and not by the drawer. Certainly not as an independent contractor, because, except in the case of the American Exchange Bank transaction, the documents were made out to the order of the Whitney Central Bank and the Hanover Bank had no title or interest in them. The only possible construction to be put upon the practice of the parties is that the Hanover Bank received the instruments of title in behalf of and as agent for the Whitney Central National Bank.

The defendant bank maintained before the Special Master below, and doubtless will repeat the contention in this Court, that none of these transactions involved the relationship of principal and agent, but merely that of debtor and creditor. This argument is based upon the theory that after all, the Hanover Bank was merely disbursing under the instructions of the defendant bank monies of the latter in its hand—in other words, it was merely discharging its indebtedness. But is it not so obvious as to be elementary that every time a principal

places funds in the hands of his agent, to be disbursed in accordance with his instructions and in connection with the principal's business, that the agency also involves a debtor and creditor relationship? And if that fact alone were sufficient to negative the agency, then the absurd result would follow that one could never act as agent for a creditor principal, or, in other words, that as soon as the agent becomes indebted to the principal, *ipso facto* he ceases to be an agent.

Purchase and Sale of Securities.

There is no suggestion in the record that the defendant bank could not have sold, in New Orleans, the Government Bonds which, as set forth in our statement of facts, it purchased and sold through J. S. Bache & Company in New York City, or that it was limited in its sale of these securities (which it goes without saying, enjoyed the widest market) to the New York Stock Exchange. For its own purposes, whatever these may have been, it elected to dispose of these securities in the State of New York on the New York market and through New York brokers selected by it for that purpose. Physical delivery of these securities was made here to the brokers by its agent. Conversely from time to time the Hanover National Bank had instructions from the defendant bank to receive securities from parties here and pay for them, debiting the defendant's account (R. 122 A to XQ 483); in other words, the defendant bank through its agent purchased, paid for and received delivery of securities in New York City.

In still other respects the Hanover National Bank acted as the agent of the defendant in handling securities in this State; for example, on the 15th day of April, 1921, the defendant sent to the Hanover National Bank temporary certificates for 2800 shares of the stock of Carson Petroleum Company with instructions to have

them exchanged for permanent stock certificates of 100 shares each in the name of Charles E. Smith, and return the same to the defendant with memorandum of any cost in the matter (R. 157).

Another instance in the handling by the Hanover Bank for the defendant bank of the sale of 10 out of 50 shares of Gulf Oil Corporation stock standing in the name of W. Nash Read, and the splitting up of the remaining 40 shares into certificates of 10 shares each (R. 116).

Possibly the two transactions last referred to were for the account of a customer of the defendant bank. If, however, it was a part of the business of the defendant bank to conduct such business for the accommodation of its customers, and such transactions could only be conveniently effectuated in New York, we maintain that by reason of its agency relations with the Hanover Bank and with its other correspondent banks with whom, according to the stipulation (R. 130), it was doing a similar business, the defendant was able to offer its customers a service in New York City in every way equal to that which it could have offered had it directly maintained its own office, advertised as such, in that City.

Certainly in selling securities through its own brokers and delivering the securities so sold in that City through its agents, the defendant bank was doing business there. The purchase and sale of United States Government bonds is a necessary part of the business of national banks. For aught that appears in the record, such securities could have been just as readily bought or sold in New Orleans. When the defendant elected to market its securities there, and did so market them, it did business there. Had the purchaser of these securities refused to consummate his agreement of purchase when they were tendered through the Hanover National Bank and Bache & Company, and had the market price of such

bonds decreased thereafter, the defendant bank as principal could have successfully maintained an action against the defaulting purchaser in the New York Courts. *Per contra* had it failed to make delivery of these securities through the Hanover National Bank or otherwise, it would have been liable as principal in an action for breach of a contract made in the State of New York. That contract was consummated by the delivery of the securities by the Hanover National Bank as defendant's agent in New York City and by the payment to the defendant's brokers, J. S. Bache & Company, by the purchaser and by the latter's payment to the Hanover National Bank in New York City. When the Hanover National Bank delivered these bonds, *defendant bank* delivered them. When the Hanover National Bank was paid the purchase price of these bonds, the *defendant bank* was paid.

Time Items.

The custom of the Hanover Bank with reference to time items sent to it by the Whitney Central National Bank, as testified to by Mr. Suydam, was as follows:

"Q. 555. As to time items, the custom as to collections of those items is as follows: They are received in our Collection Department and are placed on our records and are presented at their maturity dates to the parties on whom they are drawn, and are then immediately credited to the deposit account of the Whitney Central National Bank."

"Q. 556. If paid? A. If paid.

"Q. 557. And how if they are unpaid. A. If unpaid, they are returned to the Whitney Central Bank of New Orleans, giving the reason of non-payment" (R. 158).

Mr. Suydam added that the Whitney Central Bank put on these items "the ordinary and regular collection

endorsement, which is the endorsement which every bank puts on items for collection" (R. 158, A to Q 559).

Under this procedure, according to all of the authorities, the collecting bank does not acquire title to the item, but acts as agent for purposes of collection.

Evansville Bank v. German American Bank,
155 U. S. 556;

Sales v. United States, 234 Fed. Rep. 842;

In re Jarmulowsky, 249 Fed. Rep. 319.

We thus find that, for a period of many years, and up to the time of service of process herein, the Hanover Bank and the defendant's other correspondents have been transacting business in this city as agents of the Whitney Central Bank in the collection of notes and drafts in cases where the items were not yet due at the time of their receipt by the local correspondent. The collection of notes and drafts is part of the business of a bank. The *occasional* employment by the defendant of an agent here to collect such items might or might not be doing business. Our contention, however, is that the defendant is shown to have been engaged in collecting items through its agents in New York City to such an extent and so continuously as to constitute doing business there.

Receipts of deposits in New York for account of customers of defendant bank and the payment of checks in New York drawn by customers there on the defendant bank.

In certain instances, the Hanover National Bank received payments from persons with whom it apparently had no other relations, to the credit of the defendant bank for the account of customers of that bank. For example, the Godechaux deposit referred to at pages 73, 74

of the Record; the Guaranty Trust Company-Anderson Clayton & Company transaction, at pages 155, 156 of the Record.

On the other hand, Mr. Suydam testified that there were cases where the Whitney Central Bank would open a credit with the Hanover in favor of one of the Whitney Central's customers and that the latter would draw his check on the defendant bank, and, under the latter's instructions, the Hanover Bank would cash the check (R. 46, 47 Qs. 201-204).

Where the Hanover received deposits from third parties for the account of customers of defendant bank it acted purely for the Whitney Central Bank as a bank of deposit for the latter's customer's benefit. By this practice upon deposit of the moneys with the Hanover these funds were, through the prevailing system of inter-bank credits, immediately available to the customer. On the other hand, when a depositor in the Whitney Bank drew a check on the Whitney Bank, presented it at the Hanover Bank without endorsement from the Whitney Bank, and received payment therefor, it is clear that the Hanover Bank, in dealing with the maker and holder of the check, acted in the transaction only as the representative of the Whitney Bank. It itself had no contractual relationship of any sort with the drawer of the check. In making the payment it was not fulfilling any obligation of its own, but was acting under instructions from the Whitney Bank. The check was drawn on the Whitney Bank. The Hanover paid it in behalf of the Whitney Bank. Its authority was purely derivative. The facts fall precisely within the definition of the relationship of principal and agent cited above.

The actual effect of transactions of this character is that the Whitney Central Bank, through the Hanover Bank, as its agent, has been paying checks drawn on it by its depositors, *at the Hanover Bank in New York City.*

In doing so, it has been doing business in New York City, to the same extent as if it maintained its own paying teller in a branch office there for the convenience of its customers either living in or visiting that City.

In the same general category as the transactions above referred to, fall the instances of payment made by the Hanover National Bank to parties in New York City (presumably customers or payees of customers of the Whitney Central National Bank), (R. 46, Q. 195). These transactions Mr. Suydam testified were quite frequent (R. 46 A to A 197). See for instance the V. P. Stokes transaction at page 78 of the Record, where the defendant bank instructed the Hanover by telegram to pay one V. P. Stokes, care of Hotel Pennsylvania, the sum of \$1,000. The Hanover had no account with this person and had never heard of him (R. 78, Q. 316). In such cases we submit that something more than the ordinary debtor and creditor relation was involved. To the Hanover V. P. Stokes was a complete stranger; he presented no check of the defendant bank payable to his order; it was necessary for the Hanover to get into communication with him at the Hotel Pennsylvania and somehow or other remit to him the sum of \$1,000. Any one of these instances taken by itself alone might or might not constitute the transaction of business here, but taken in the aggregate they illustrate clearly the point which we make, and that is through the agency of its six correspondents in New York City, the defendant bank was able to and did furnish as effective and efficient service to its customers when they came to New York, as if it had openly maintained a branch office in that City.

In concluding this point we submit that an analysis of the testimony heretofore discussed demonstrates that the suggestion contained in the Master's report to the

effect that the mere maintenance by a corporation organized under the laws of one state of a bank account in another state would not constitute the doing of business within the latter state so as to render the corporation amenable to service of process therein, loses its force when applied to the instant case. This is true, primarily because the so-called deposit accounts which the defendant bank maintained with the Hanover Bank and with five other banks in the City of New York were vastly different in their nature and in their scope from such as is ordinarily maintained by the usual bank depositor. *It is a vital distinction that the so-called depositor was a bank itself* and that it employed the so-called accounts as a convenient means of transacting in a state fifteen hundred miles from its home office certain of the same types of business which from day to day it was accustomed to transact at that office. An ordinary bank depositor uses his bank account for one purpose only, namely, to lodge his money therein and to make payments by checks drawn thereon. In the case of a bank depositor, however, the very merchandise in which it deals is money and credit and when its custom rises to such a point that the needs of its patrons demand that it shall supply and make available to them its money and credit at places outside of the state wherein it is organized, and when it continuously, through the means of its correspondent banks, at such places, satisfies such needs of its customers, *it necessarily transacts banking business to that extent in those places.*

Why should the defendant bank find it necessary to maintain *six bank accounts* in the City of New York except to furnish a service there to its customers which otherwise could only be furnished by New York banking institutions?

In this respect, its purpose in transacting business in a foreign state is no different from that of a mercantile organization which finds it to its interest to supply its

merchandise or render merchantable service to its customers wherever they may be whenever their needs may so require. Take for instance the American Exchange National Bank transaction. If the defendant bank had not been able, through its relations to the Hanover National Bank, to issue a credit made payable in New York City, if it had not been through the same medium in a position to take delivery of the merchandise against which payment was made for its account in New York City, and insure it and store it and hold it for many months in New York and deliver it piecemeal to the agents of the purchasers thereof, then, necessarily, its customer for whose account presumably the credit was issued, must have taken the business either to a New York bank or to another New Orleans bank which *did* furnish these facilities.

The record clearly indicates a settled policy whereby the defendant bank followed its customers to New York, arranged in one instance for the honoring of their checks there, arranged in another for them to be sought out and payments of cash to be made to them there, and in another arranged for the safekeeping and care of their securities in New York, etc., and it did this not only through the one bank whose business was made the subject of specific testimony, but as the stipulation necessarily establishes (R. 130), through *five other banks*, although in such instances to a lesser degree, and not in respect to letters of credit. It is manifest that if all of these transactions had taken place within the City of New Orleans they would concededly constitute the doing of business in New Orleans? Upon what possible theory supported by either logic or authority can they be deemed to be the less "doing business" merely because their situs was in the City of New York and the machinery employed was six correspondent banks located in New York.

If the order of the court below which is the subject of review here is not reversed, then to all practical intents and purposes, a bank in one state can conduct through the medium of correspondent banks in another state nearly every form of business which it conducts in its home state, without subjecting itself to the service of process in the foreign state. And this would be true, even though the plaintiff (as in the instant case) were a citizen of the foreign state, the cause of action arose therein and the suit begun by service of process on defendant's President or other officer within the foreign state on business of the defendant.

Why should such discrimination be made in favor of banks and particularly national banks which, under the Revised Statutes, Sec. 5242, already enjoy the special privilege of exemption from preliminary attachment, injunction or execution? If the defendant bank in the case at bar had not been a national bank it would have been a simple matter to have acquired jurisdiction over it by instituting this action in the New York State Court and by process of that court attaching its various bank accounts in New York City or any other part of its property which happened to be located in the State at the time.

Again, it so happens in the case at bar that a large sum is in controversy and the plaintiff is itself a bank, but the decision of this court will apply equally to small claims and to impecunious plaintiffs. So far as we have been able to discover, no reason of public policy has ever been enunciated by this or any other court which requires that it be made *difficult* for a local court to obtain jurisdiction over a foreign corporation transacting some part at least of its business in the state of the forum. On the contrary, this court has itself indicated that the ends of justice are better promoted by a more liberal policy.

“A vast mass of business is now done throughout the country by corporations which are char-

tered by States other than those in which they are transacting part of their business, and justice requires that some fair and reasonable means should exist for bringing such corporations within the jurisdiction of the courts of the State where the business was done, out of which the dispute arises." (Opinion of Mr. Justice Peckham in *Connecticut Mutual Life Insurance Co. v. Spratley*, 172 U. S. 602, at p. 619.)

And in the same case this Court quoted, with approval, the language of Mr. Justice Swayne in *Railroad Company v. Harris*, 12 Wall. 65, 83, as follows:

"When this suit was commenced, if the theory maintained by the counsel for the plaintiff in error be correct, however large or small the cause of action, and whether it were a proper one for legal or equitable cognizance, there could be no legal redress short of the seat of the company in another state. In many instances the cost of the remedy would have largely exceeded the value of its fruits. In suits local in their character, both at law and in equity, there could be no relief. The result would be, to a large extent, immunity from all legal responsibility."

II.

At the very time of the service of the summonses herein the president of the defendant bank was transacting its business in the State of New York.

As we have heretofore pointed out, the affidavit of Bouden is significantly silent as to the purpose of his visit to New York at the time he was served with process, and no testimony of any kind was offered by the *defendant* which threw any light on the question of what he was doing in New York at the time. Although these facts were necessarily peculiarly within the knowledge of the defendant, it elected to maintain silence and leave the court entirely in the dark on this point. Under these circumstances, the court will presume that had Bouden appeared before the Master and testified, his testimony would necessarily have been unfavorable to the defendant.

“Failure of Mrs. Hickey to appear for examination before the Referee, of itself would afford strong presumption against her contention that she was never personally served with the summons”.

Smith v. Hickey, 25 N. Y. App. Div. 105, at 106.

See also

Dutton vs. Smith, 23 N. Y. App. Div. 188, at p. 190.

Wigmore on Evidence, Vol. 1, Sec. 290, Subdivision 4.

No explanation of Bouden's absence was offered or suggested. Fortunately, however, the plaintiff was able through the testimony of Mr. Kenzel to throw such light on the purpose of Mr. Bouden's visit and his

activities while in this City as to leave no room for doubt that he was here in his official capacity engaged in the transaction of business in behalf of the defendant bank at the very time he was served with process. Mr. Kenzel's testimony is fully summarized in the statement of facts in this brief, beginning in the middle of page 16 and running to the middle of page 18, where appropriate references to the record will be found.

We submit that the testimony referred to can have but one construction, and that is as follows: Acceptances of the Whitney Central National Bank were being offered for sale in the New York market. The Federal Reserve Bank of New York is a large purchaser of bank acceptances of this character in that market. Its declination to purchase further paper of the defendant bank as a result of inquiries which it had instituted obviously for the purpose of determining whether or not the defendant bank was justified in repudiating its letter of credit obligations, was a matter of the greatest importance to the defendant bank, not only because of the direct results of such declination, but also because of the effect of the attitude of so important an institution as the Federal Reserve Bank of New York upon the outside New York market. Bouden's conference with Kenzel had been carefully pre-arranged through one who could be trusted to intercede for him because of the correspondent relationship of the bank of which he is President with the defendant bank, and whose intercession it was obviously anticipated would be effective by reason of his directorship in the Federal Reserve Bank of New York. The purpose of the interview was clearly to cause the man who had "general supervision of the entire investment policy" of the Federal Reserve Bank (R. 145) to reconsider the attitude which he had previously adopted in order that defendant bank's acceptances might once more become readily salable in the New York market.

This was business, and business of the utmost concern to the Whitney Central Bank.

If Mr. Bouden during this important and somewhat ticklish conference with Mr. Kenzel was not transacting business for and of the Whitney Central National Bank, *what was he doing?*

The case of *Commercial Mutual Accident Co. vs. Davis*, 213 U. S. 245, is closely in point. There, a Dr. Mason, who apparently was not even an officer of the corporation, came into the State where the litigation was subsequently instituted, for the purpose of examining the body of the deceased and of adjusting the claim. He met the plaintiff's representative and conferred with him with reference to compromising the claim. After some negotiations, a process server appeared, and the Doctor was served with a petition in the suit, the latter having been prepared even before his arrival within the State. The record disclosed that the Insurance Company had other insurance policies outstanding in the State, but there was no proof that such policies had not been executed (so far as the Company was concerned) at its home office outside of the State and thereafter delivered through the mails. The court also referred to the fact that "upon these policies undoubtedly premiums were paid," but there was no proof that such premiums were not also paid by remittance through the mails, and, in the ordinary course of business, they would be so paid, particularly as the Insurance Company had no agent within the State. Nevertheless, the court held that the company was doing business within the State of Missouri. The fact which seems to have been accorded the most weight by the court was that:

"The record shows that the company sent Dr. Mason to Fayette to investigate the loss sued for in this case and later and at the time of the service of the process, Mason was in Missouri with full authority to settle the loss in controversy."

In the case at bar, it is true that there is no proof of any specific authority to Bouden to visit New York in order to persuade the Federal Reserve Bank of New York to reconsider the attitude which it had taken with respect to the purchase of Whitney Central Bank acceptances. Such authority, however, would certainly be within the general scope of the authority of a bank president. No suggestion has been made of any lack of authority on the part of Bouden, and in the absence of testimony to the contrary from the defendant, such authority must be presumed. In certain aspects the case at bar is much stronger than the *Commercial Mutual Accident Company* case because the object of Bouden's visit to Kenzel was not to dispose of one single transaction, but to remedy a general condition, namely: the diminished marketability in New York City of Whitney Central Bank's acceptances. It was to the *future* that Bouden was looking when he secured the good offices of Mr. Alexander, to introduce him to Mr. Kenzel. The fact that Bouden had considered it necessary to come from New Orleans to New York (which we submit must fairly be presumed from the evidence) for the purpose of improving the position of his bank's acceptances there is in itself the strongest possible indication of the extent to which the Whitney Central Bank was active in and dependent upon the New York financial market to market its wares.

III.

The transactions which the defendant's correspondents have conducted for it as its agents in New York City have been of a class which may legally be performed by a national bank at a place other than its home office.

In the argument below, great stress was laid upon the contention that under the National Banking Act a national bank cannot legally transact business in a place other than the place where its home office is located, under penalty of charter forfeiture. It was then asserted that the record established that many other non-New York banks were engaged in transactions within the State of New York similar to those which were proven with respect to the defendant bank. The conclusion which was drawn from these premises is discussed later.

It is true that the National Bank Act (Rev. Stat., Sec. 5190) provides that the *usual* business of such a bank shall be transacted at the office located in the place specified in its organization certificate. What is usual business is indicated in Section 5134 which provides that the organization certificate of a national bank shall state "the place where its operations of discount and deposit are to be carried on." That the Act contemplates business of a nature incidental and in addition to the usual business specifically enumerated therein is evidenced by Section 5136, subdivision 7, reading as follows:

"7. To exercise by its board of directors, or duly authorized officers or *agents*, subject to law, all such *incidental* powers as shall be necessary to carry on the business of banking."

All of these sections should be read together.

In *Merchants Bank vs. State Bank*, 10 Wall. 604, the cashier of the State National Bank had certified three

checks, *not* at the office of the bank of which he was cashier, but at the office of the Merchants National Bank where he also received certain gold bullion. It was contended that this act of the cashier was in violation of the Act of Congress requiring the business of national banks to be done at its office or banking house. This contention was answered in the opinion of Mr. Justice Swayne in language which completely disposes of the similar contention made by the defendant bank in the case at bar.

*"It is objected that the checks were not certified by the cashier at his banking house. The provision of the Act of Congress as to the place of business of the banks created under it must be construed reasonably. The business of every bank, away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person or by correspondents or other agents. * * * There is no force in this objection."* p. 610. (Italics ours.)

The *usual* business of a national bank is obviously receiving deposits and making loans and discounts. We do not contend that the Whitney Central Bank was, technically speaking, receiving deposits or making loans and discounts in the City or State of New York. We *do* maintain, however, that various other classes of business which were conducted in its behalf by the Hanover National Bank and, to a lesser degree, by its other correspondent banks in New York, although incidental to the ordinary business of banking cannot properly be considered in the statutory sense the *usual* business of the bank. Particularly is this so with respect to such transactions as were involved in the American Exchange National Bank matter, in the sale of securities in the New York market through New York brokers, etc.

All that the defendant's argument amounts to is this:

A national bank must, according to the Statute, transact its *usual* business at its home office. The business, if any, which the Hanover transacted for the Whitney in New York was its usual business. Hence in conducting such transactions through the Hanover, the Whitney violated the provisions of the National Bank Act and is accordingly subject to charter forfeiture. The Hanover had four thousand other bank deposit accounts (how many, if any, are accounts of National Banks is not disclosed). The Hanover is transacting a similar business for all of these banks (as we have already pointed out, the record does not justify this assumption); hence all of these banks are violating the National Bank Act and are subject to charter forfeiture. Nobody has stopped these banks from doing business of this character through a correspondent New York bank in New York City (at least so counsel has assumed but not proved); hence these banks are not doing business within the State of New York, and, therefore, neither is the Whitney Central National Bank.

We have already pointed out the irrelevancy of the testimony as to other banks. Irrespective of that fact, however, the record does *not* justify the assumption that the Hanover was conducting a business for these other banks in this City, of the varied, extended and unusual character which it did for the Whitney Central National Bank. For example, there is not a word of specific testimony to justify any assumption that the Hanover ever handled for any other bank, national or otherwise, a transaction or series of transactions similar to those in the American Exchange National Bank matter.

Let us assume, however, solely for purposes of argument, that the business which the defendant bank transacted through its correspondent banks in New York was in excess of its charter powers or the powers conferred upon it by the National Banking Act, would this fact render it any less amenable to the jurisdiction of the

New York courts? Should it be heard to urge that because the business which it transacted was in excess of its legal authority, it therefore had not transacted the business at all? Surely it is a novel proposition that because of the illegality of the business transacted by the defendant, it can deprive the courts of justice of a jurisdiction which they would have clearly possessed had the transactions in question been legal.

IV.

The District Court had jurisdiction of this action under Section 24 of the Judicial Code.

The defendant in error argued before the Special Master that the court was without jurisdiction because under Revised Statutes *Section 5198* the Whitney-Central National Bank could be sued only in the district in which it was established or located and that as it was established and located in Louisiana, it could be sued only in that state.

The fallacy in the argument is patent and consists in attempting to apply to this case an exceptional rule by which it clearly is not controlled instead of the general provision relating to jurisdiction of actions against National Banks contained in Section 24 of the Judicial Code and Section 4 of the Act of July 12, 1882 (Ch. 290, 22 Stat. 162). Section 24 provides that the District Court shall have original jurisdiction:

“Sixteenth. Of all cases commenced by the United States, or by direction of any officer thereof, against any National Banking Association, and cases for winding up the affairs of any such banks; and all suits brought by any Banking Association established in the district for which the court is held, under the provisions of title ‘National Banks’, Revised Statutes, to enjoin the Comptroller of the Currency or any receiver acting under his direction as provided by said Title. *And all National Banking Associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located.*” (Italics ours.)

The Act of July 12, 1882, providing for the extension of National Bank charters, contained the following proviso:

"Sec. 4. * * * *Provided, however, That the Jurisdiction for suits hereafter brought by or against any association established under any law providing for national-banking associations, except suits between them and the United States, or its officers and agents, shall be the same as and not other than the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national-banking associations may be doing business when such suits may be begun; And all laws or parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed.*"

By these Sections the legislative intent is clearly manifested that as a general rule National Banks should for purposes of Federal jurisdiction be treated as citizens of the states in which they are located, and that in ordinary actions in which a National Bank is a party the same rule should be applied in determining what court can entertain jurisdiction, as in the case of any other corporation or individual. This intention, apparent on the face of both statutes, is emphasized by the exceptional provisions made for special kinds of actions, for where it was desired to confine the jurisdiction in cases by or against National Banks to the court of a particular locality, that intention was unequivocally expressed. Thus it was provided in Section 24 of the Judicial Code that suits brought by a National Bank to enjoin the Comptroller of the Currency or any receiver acting under his direction must be brought in the district for which the court is held. A similar provision is found in Section 49 of the Judicial Code requiring that

"All proceedings by any National Banking Association to enjoin the Comptroller of the Currency,

under the provisions of any law relating to National Banking Associations, shall be had in the district where such Association is located."

See

First National Bank v. Williams, 252 U. S. 504.

Another class of actions which Congress saw fit to treat as exceptional is an action against a National Bank under the usury laws, the exceptional provision relating thereto being found in Section 5198 of the Revised Statutes. That Section, following immediately the definition of usury in Section 5197, first provides that the charging of usurious interest by a National Bank shall be deemed a forfeiture of the entire interest which the evidence of the indebtedness carries, and gives to any person who has paid usurious interest a cause of action against the National Bank to recover twice the amount so paid. The Section then provides

"that suits, actions and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

That this provision applies alone to usury cases would seem to require no argument. To give to it the broad significance contended for by the defendant in error would bring about a direct conflict between Section 5198 of the Revised Statutes and Section 24 of the Judicial Code and the Act of 1882, and would moreover require it to be held that the provisions of Section 24 of the Judicial Code and of the Act of 1882 were repealed or nullified by the *earlier enactment*. There is in truth no inconsistency in the several statutes referred to; they are in

complete harmony and clearly and unambiguously provide that except as to particular cases expressly mentioned, actions by and against national banks are subject to the same jurisdictional rules which apply to actions by or against any other person. The soundness of this conclusion as to the legislative intent is also demonstrated by a brief review of the history of the statutes involved and decisions relating thereto.

In the first National Bank Act (Act of February 25, 1863, Ch. 58, 12 Stat. 665) it was provided in Section 59:

“That suits, actions, and proceedings by or against any Association under this Act may be had in any circuit, district, or territorial court of the United States held within the district in which such Association may be established.”

In the following year, the second National Bank Act (Act of June 3, 1864, Ch. 106, 13 Stat. 99) was passed, which provided in Section 57:

“That suits, actions and proceedings, against any Association under this Act, may be had in any circuit, district or territorial court of the United States held within the district in which such Association may be established; or in any state, county or municipal court in the county or city in which such Association is located, having jurisdiction in similar cases; provided, however, that all proceedings to enjoin the Comptroller under this Act shall be had in a circuit or territorial court of the United States, held in the district in which the Association is located.”

It is to be observed that the words “by or” which appear in Section 59 of the Act of 1863 were held by this Court to have been inadvertently omitted in Section 57 of the Act of 1864, the intention having been to reenact in 1864 the provision of the Act of 1863 that suits,

etc., "by or against any Association under this Act" may be had in the district in which the bank is established.

See

Kennedy v. Gibson, 8 Wall. 498.

First National Bank v. Williams, 252 U. S. 504, 511.

By the Revised Statutes these provisions were repealed and the following enacted:

"Sec. 563. The District Courts shall have jurisdiction as follows:

Fifteenth. Of all suits by or against any Association established under any law providing for National Banking Associations within the district for which the court is held."

"Sec. 629. The Circuit Courts shall have original jurisdiction as follows:

Tenth. Of all suits by or against any Banking Association established in the district for which the court is held, under any law providing for National Banking Associations.

Eleventh. Of all suits brought by any Banking Association established in the district for which the court is held, under the provisions of title 'The National Banks', to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title."

Section 5198 of the Revised Statutes provides as follows:

"The taking, receiving, reserving, or charging a rate of interest greater than is allowed by the preceding section, when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid there-

on. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back, in an action in the nature of an action of debt, twice the amount of the interest thus paid from the association taking or receiving the same; provided such action is commenced within two years from the time the usurious transaction occurred. *That suits, actions, and proceedings against any association under this title may be had in any circuit, district, or territorial court of the United States held within the district in which such association may be established, or in any State, county, or municipal court in the county or city in which said association is located having jurisdiction in similar cases.*" (Italics ours.)

As originally enacted, Section 5198 did not include the last sentence with reference to suits against National Banks, that provision having been added by amendment in 1875 (Act of February 18, 1875, Ch. 80, 18 Stat. 316).

After the Revised Statutes were enacted, there was a difference of opinion with reference to jurisdiction over actions against National Banks. On the one hand, it was held that the provisions in the earlier Acts and in the Revised Statutes to the effect that suits might be brought in the district in which the Banks were located and conferring jurisdiction on the district and circuit courts of suits by or against National Banks located in the district in which the court was held, limited jurisdiction of such suits to the courts in the districts or counties in which the Banks were located. Other courts held that by such provisions it was intended to enlarge the jurisdiction of the Federal Courts to permit them to entertain suits by or against National Banks in the district in which they were located without reference to the citizenship of the other party to the controversy. The New

York courts and some Federal courts held that the provisions were not intended to limit the jurisdiction.

Cooke v. State National Bank of Boston, 50 Barb., 339; 62 N. Y. 96.

Talmadge v. Third National Bank, 91 N. Y. 531.

Main v. Second National Bank of Chicago, 6 Biss. 26.

New Orleans National Bank v. Adams, 3 Woods, 21.

Adam & Co. v. Daunis, 29 La. Ann. 315.

On the other hand the Massachusetts court and other Federal courts held that the court of the district or county in which the Bank was located was, by virtue of these provisions, the only court which could entertain jurisdiction of suits *against* National Banks.

Crocker v. National Bank of New York, 101 Mass., 240.

Cadle v. Tracy, 11 Blatchf. 101.

At the same time it was held, generally, by the Federal Courts that suits *by* National Banks might be brought in districts other than the one in which they were established.

Manufacturers National Bank of Chicago v. Baach, 8 Blatchf. 137.

St. Louis Bank v. Allen, 5 Fed. 551.

It is not necessary to analyze the Statutes, nor, by an investigation of the authorities, to determine which line of decisions is supported by the better reasoning and which rule is supported by the weight of authority. It suffices to point out that there was a conflict of authorities, although it may be observed that it is not a little incongruous that courts should be in agreement that suits *by* National Banks might be brought in districts other

than the district in which they are located, while they disagreed as to whether suits brought *against* National Banks might be brought in other districts, since the provision in every Statute involved in the agreement or disagreement concerned suits "*by or against*" National Banks.

To settle the conflict of authority and also to put an end to the discrimination against State Banks, brought about by the provisions which permitted National Banks to sue in the Federal court and which, according to some authority, required suits against National Banks to be brought in the district of their location, Congress, in extending the charters of National Banks in 1882 provided as follows:

"That the jurisdiction over suits hereafter brought by or against any Association established under any law providing for National Banking Associations, except suits between them and the United States, or its officers and agents, *shall be the same as and not other than the jurisdiction over suits by or against Banks not organized under any law of the United States which do or might do banking business where such National Banking Associations may be doing business when such suits may be begun; And all laws or parts of laws of the United States inconsistent with this proviso be, and the same are hereby repealed.*" Act of July 12, 1882, Ch. 290, Sec. 4, 22 Stat. 162. (Italics ours.)

The meaning of this provision plainly appears from its terms. In the light of the previous legislation, the purpose of Congress to put an end to all discrimination between State and National Banks, so far as suits by or against National Banks is concerned, is beyond question.

That such was the effect of the statute was held in *Petri v. Commercial National Bank*, 142 U. S. 644, 649, where Mr. Justice Day said:

“The necessary effect of this legislation was to make national banks for purposes of suing and being sued in the Circuit Courts of the United States, citizens of the States in which they were respectively located, and to withdraw from them the right to invoke the jurisdiction of the Circuit Courts of the United States simply upon the ground that they were created by and exercised their powers under Acts of Congress. No other purpose can be imputed to Congress than to effect that result.”

See also

Leather National Bank v. Cooper, 120 U. S. 778.

Ex parte Jones, 164 U. S. 691.

Continental National Bank v. Buford, 190 U. S. 119.

Bankers Trust Co. v. Texas & Pacific Ry. Co. 241 U. S. 295.

In 1887 and 1888 two judiciary acts were passed, the latter being amendatory of the first (Act of March 3, 1887, Ch. 373, 24 Stat. 554; Act of August 13, 1888, Ch. 886, 25 Stat. 436). Section 4 (identical in both Acts) provided:

“That all National Banking Associations established under the laws of the United States shall, for the purposes of all actions by or against them, real, personal or mixed, and all suits in equity, be deemed citizens of the states in which they are respectively located; and in such cases the Circuit and District Courts shall not have jurisdiction other than such as they would have in cases between individual citizens of the same state. The provisions of this Section shall not be held to affect the jurisdiction of the Courts of the United States in cases commenced by the United States or by direction of any officer thereof, or cases for winding up the affairs of any such Bank.”

The same purpose manifested by the Act of 1882 (which was not repealed) is evidenced in the Acts of 1887

and 1888; that is, that National Banks, for purposes of Federal jurisdiction are to be considered as citizens of the state in which they are located, except in specific cases, which are expressly mentioned.

The Judicial Code adopted in 1911 expressly repealed Sections 563 and 629 of the Revised Statutes and Section 4 of the Judiciary Act of August 13, 1888, leaving in force, therefore, the Act of 1882 above quoted and Section 5198 of the Revised Statutes.*

From this brief review of the history of the provisions dealing with Federal jurisdiction over suits against National Banks, it is quite clear that to give to the plain language of Section 24 of the Judicial Code the interpretation contended for by the defendant in error would not only distort the language of the Section, but would restore the very evil which the legislative history shows it was the purpose of Congress to remedy.

As above stated, Section 5198 exceptionally provides that in suits against a National Bank to recover usurious interest paid, the suit may be brought in the District Court in the district where the Bank is located, and it was as to such case, that is, a suit to recover usurious interest within the express terms of Section 5198, that the court, in *Charlotte National Bank v. Morgan*, 132 U. S. 141, 149, intimated without expressly deciding, that the jurisdiction of the District Court of the district in which the Bank was located was exclusive. Indeed, the exceptional nature of the jurisdiction in such cases is additionally emphasized and its correspondingly limited operation made manifest by the fact, already referred

*As the jurisdictional provision of the section would seem clearly to relate solely to actions to recover usurious interest, there is no inconsistency between its provisions and other sections dealing with jurisdiction over actions by and against National Banks, and hence in our view Section 5198 of the Revised Statutes has not been repealed. If the broader application contended for by the defendant in error be given to Section 5198, direct conflict with the provisions of paragraph 16 of Section 24 of the Judicial Code and Section 4 of the Act of 1882 will result; and as those provisions were enacted after the amendment of Section 5198, that section to the extent that it conflicts with the others must be considered repealed, particularly is this true since by the Act of 1882 all laws or parts of laws inconsistent with the provision in question were repealed.

to, that the jurisdictional clause relied upon by the defendant was not included in the Revised Statutes as originally enacted, but was added by amendment to Sec. 5198 the section providing for suits against National Banks to recover usurious interest which theretofore contained no limitation as to the jurisdiction of such suits. The addition of the jurisdictional sentence by subsequent amendment clearly indicates that it was intended to apply only to the cases provided for by the section to which it was added by way of amendment.

The foregoing review also makes it clear that there is no public policy requiring that National Banks be treated differently than other banks or other corporations as regards jurisdiction of actions against them. On the contrary, there is evidenced a tendency to place them on an equality with State Banks—a tendency which still persists in present day legislation. In the beginning fiscal agents of the Government, it was perhaps desirable to safeguard National Banks by permitting them to be sued only in the courts of their location, and there is cogency in the reasoning of the cases which so construed the earlier legislation on the subject. As the functions and duties of National Banks as fiscal agents diminished and their practical status as competitors of state banks was recognized, the necessity for discriminating in their favor disappeared and the jurisdictional restrictions were removed by legislation which expressly provided that jurisdiction over suits by or against National Banks “*shall be the same as and not other than the jurisdiction over suits by or against Banks not organized under any law of the United States*”, etc.

This legislative policy to treat National Banks and State Banks on an equality is further manifested by recent legislation, Section 11 (K) of the Federal Reserve Act (Act of December 23, 1913, 38 Stat. 251, 262, Ch. 6) authorizing the Federal Reserve Board to grant to National Banks the right to act as trustee, executor, administrator or registrar of stocks and bonds—rights con-

ferred upon National Banks by Congress because possessed by state banking corporations and trust companies, their competitors in business, see *First National Bank v. Union Trust Co.*, 243 U. S. 416, 426. Furthermore, the same statute and the several acts amendatory thereof, have in effect substituted the Federal Reserve Banks thereby authorized as fiscal agents of the Government (which banks, unlike National Banks, may invoke the jurisdiction of United States Courts by reason of their federal origin, *American Bank & Trust Co. v. Federal Reserve Bank*, 256 U. S. 350, 356, 357); in addition the statutes expressly provide for membership in Federal Reserve Banks by State as well as National Banks, and in other respects evidence the legislative intention to avoid discrimination between National Banks and banks not organized under the laws of the United States.

The conclusion that the court below had jurisdiction of the action against the National Bank is required by the plain text of the Act of 1882 and Section 24 of the Judicial Code, by the history of the congressional legislation dealing with the subject and by the policy of the Government as evidenced by general legislation with reference to National Banks.

The order entered by the court below should be reversed and the case remanded with directions to overrule the order and to deny the motion to set aside the service of summons.

Respectfully submitted,
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JAN 8 1923

WM. R. STANSBURY
CLERK

No. 205

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1922.

THE BANK OF AMERICA,
Plaintiff in Error,
against

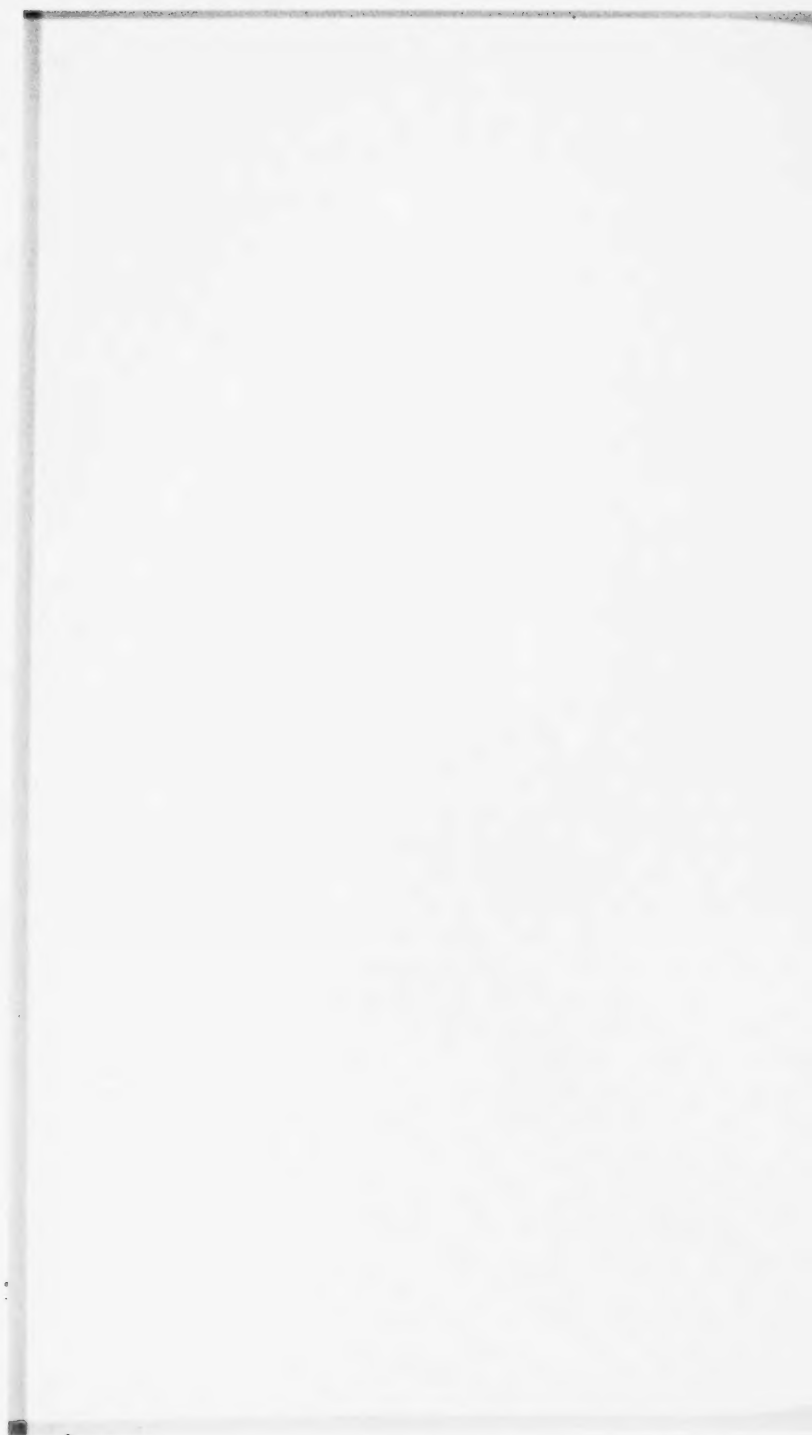
WHITNEY CENTRAL NATIONAL BANK,
Defendant in Error.

In Error to the District Court of the United
States for the Southern District of New York.

**BRIEF AND ARGUMENT FOR DE-
FENDANT IN ERROR.**

Monte M. Lema

MARTIN CONBOY,
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1922.

THE BANK OF AMERICA, Plaintiff in Error, v. WHITNEY CENTRAL NATIONAL BANK, Defendant in Error.	}
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IN ERROR TO THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

**BRIEF
FOR DEFENDANT IN ERROR.**

Brief of the Argument.

The following points are presented:

- (1) The defendant in error was not transacting business in the City and State of New York so as to make it subject to service of process in the Southern District of New York.

Revised Statutes, Sec. 5136;

Merchants' Bank v. State Bank, 10 Wall.
(77 U. S.) 604 at 650, 651;

Honeyman v. Colorado Fuel & Iron Co.,
133 Fed. 96;

- Swann v. Mutual Reserve Fund Life Association*, 100 Fed. 922;
Toledo Railways etc. Co. v. Hill, 244 U. S. 49, at 53;
Caledonian Coal Co. v. Baker, 196 U. S. 432;
Lathrop-Shea & Henwood Co. v. Interior Construction & Improvement Co., 150 Fed. 666;
Philadelphia & Reading Railway Co. v. McKibbin, 243 U. S. 264, at 268;
Clews v. Woodstock Iron Co., 44 Fed. 31;
Good Hope Co. v. Railway B. F. Co., 22 Fed. 635, at 637;
Hazeltine v. Mississippi Valley Fire Ins. Co., 55 Fed. 743, at 748;
St. Louis S. W. Ry. v. Alexander, 227 U. S. 218, at 227;
Green v. Chicago, B. & O. R. R. Co., 205 U. S. 530;
Peterson v. Chicago, R. I. & P. Ry. Co., 205 U. S. 364;
Goepfert v. Compagnie Generale Transatlantique, 156 Fed. 196;
Graustein v. Rutland R. R. Co., 256 Fed. 409;
McGuire v. Great Northern Ry. Co., 155 Fed. 230;
Case v. Smith, Linenweaver & Co., 152 Fed. 730.

Distinguishing:

- Barrow Steamship Co. v. Kane*, 170 U. S. 100;
St. Louis, S. W. Ry. Co. v. Alexander, 227 U. S. 218;
International Harvester Co. v. Kentucky, 234 U. S. 579;

International Text Book Co. v. Pigg, 217 U. S. 91;

Commercial Mutual Accident Co. v. Davis, 213 U. S. 245;

Pennsylvania Lumbermen's Insurance Co. v. Meyer, 197 U. S. 407.

- (2) The president of the defendant was not transacting its business in the State of New York at the time of the attempted service of process.

Central Grain & Stock Exchange v. Board of Trade, 125 Fed. 463, at 466;

Jackson v. Delaware River Amusement Co., 131 Fed. 134;

St. Clair v. Cox, 106 U. S. 350;

Earle v. Chesapeake & Ohio Ry. Co., 127 Fed. 235;

Crocker v. Marine National Bank of N. Y., 101 Mass. 240;

Charlotte Nat'l Bank v. Morgan, 132 U. S. 141, at 145;

Buffalo Sandstone Brick Co. v. American Sandstone Brick Machinery Co., 141 Fed. 211;

Wilkins v. Queen City Savings Bank & T. Co., 154 Fed. 173;

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Div. 732.

Distinguishing:

Smith v. Hickey, 25 N. Y. App. Div. 105;
Dutton v. Smith, 23 N. Y. App. Div. 188;
Commercial Mutual Accident Co. v. Davis,
213 U. S. 245.

- (3) To hold on the facts disclosed by the testimony that the defendant is doing business in New York necessarily involves the conclusion that every national bank in the United States wherever physically located is doing business illegally and is subject to charter forfeiture.

First National Bank v. Murray, 212 Fed.
140;

Opinions of Attorneys General, Vol. 29,
p. 81;

Revised Statutes, Sec. 5134;

Revised Statutes, Sec. 5190;

Act May 1, 1886, c. 73, Sec. 2;

Act December 23, 1913, c. 6, Sec. 25 as
amended by *Act of September 7, 1916*,
c. 461;

Revised Statutes, Sec. 5198 as amended
by *Act February 18, 1875*, c. 80, Sec. 1;

Revised Statutes, Sec. 5219;

Distinguishing:

Merchants' Bank v. State Bank, 10 Wall.
604.

- (4) The District Court was without jurisdiction under section 5198 of the Revised Statutes.

Revised Statutes, Sec. 5198;
Crocker v. Marine National Bank of N. Y., 101 Mass. 240;
Cadle v. Tracy, 11 Blatchford, 101 at 116;
Charlotte National Bank v. Morgan, 132 U. S. 141, at 145;
Corpus Juris, Vol. 7, p. 836;
Act of July 12, 1882, C. 290, Sec. 4;
Federal Judicial Code, Sec. 24, Subd. 16;
Petri v. Commercial National Bank, 142 U. S. 644 at 649;
Continental National Bank v. Beauford, 191 U. S. 119 at 123-124;
Ex Parte Jones, 164 U. S. 691;
Herrmann v. Edicards, 238 U. S. 107.

Distinguishing:

Cook v. State National Bank of Boston, 50 Barb. (N. Y.) 339, aff'd 52 N. Y. 96;
Robinson v. National Bank of Newberne, 81 N. Y. 385;
Talmage v. Third National Bank, 91 N. Y. 531.

I.

The defendant in error was not transacting business in the City and State of New York so as to make it subject to service of process in the Southern District of New York.

The defendant in error (hereinafter called the defendant), the Whitney Central National Bank, is a corporation organized under the National Banking Law for the purpose of carrying on the business of banking in accordance with Federal Statutes, and domiciled in New Orleans, La. It has no office or branch in the City of New York (R. 117).

Revised Statutes, Sec. 5136 sets forth the powers enjoyed by such a corporation. They are:

“First: To adopt and use a corporate seal.

Second: To have succession for the period of twenty years from its organization * * *.

Third: To make contracts.

Fourth: To sue and be sued * * *.

Fifth: To elect or appoint directors * * *.

Sixth: To prescribe by its board of directors by-laws not inconsistent with law regulating the manner in which its stock shall be transferred. * * *

Seventh: To exercise by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt; by receiving de-

posits, by buying and selling exchange, coin and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes according to the provisions of this Title."

The above section constitutes a definition of the business of banking as conducted by national banks. The testimony shows that the powers enumerated in the above statute are exercised by the defendant at New Orleans and there only.

It is impossible for a national bank to transact business elsewhere than at the place where its banking office is located and established. Its business unlike that of a manufacturing or other industrial or mercantile corporation can be done only where the bank itself does its banking business, *i. e.*, where it receives deposits, issues its notes, honors checks on depositors' balances, makes loans and receives securities for such loans, buys and sells exchange, coins or bullion, and issues and circulates notes under the provisions of the National Banking Law. An industrial or trading corporation may sell its product anywhere and the question that arises when it is sought to serve such a corporation with process is whether it was doing its ordinary business in the jurisdiction of such service; but manifestly a national bank cannot be doing its ordinary business at any place other than within the jurisdiction of its domicile.

We are not unmindful of the language of this Court in *Merchants' Bank v. State Bank*, 10 Wall. (77 U. S.) 604, where it was said, at pages 650, 651:

"It is objected that the checks were not certified by the cashier at his banking-house. The provision of the act of Congress as to the place of business of the banks created under it * must be construed reasonably. The business of every bank, away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person, or by correspondents or other agents. In the case before us, the gold must necessarily have been bought, if at all, at the buying or the selling bank, or at some third locality. The power to pay was vital to the power to buy, and inseparable from it. There is no force in this objection."

The effect of that decision was merely that the certification of checks by a cashier, and the physical carrying on of other activities at places away from the banking-house of a national bank, did not constitute transacting the usual business of such bank at a place other than the office or banking-house. In other words, irrespective of the place at which the physical acts were performed, the business, in contemplation of law, was transacted at the place of the bank's organization.

The sum and substance of the testimony in the case at bar is that the defendant has one or more deposit accounts in the City of New York, that is, that the defendant like any individual keeps a bank account there and draws checks upon that

* National Currency Act of 1864, Act June 3, 1864 (ch. 106, sec. 8, 13 Stat. 101), providing that the "usual business" of a national bank organized under it "shall be transacted at an office or banking house located in the place specified in its organization certificate." An identical provision is now contained in R. S. Sec. 5190.

bank account. In saying that the defendant draws checks upon the bank account we mean to include the other means by which it makes payment out of the money on deposit with the Hanover National Bank of the City of New York, (hereinafter called the Hanover Bank), and other banks, because telegraphic or other orders, including drafts, such as were testified to by the witness Suydam, amount to no more than another form of check.

All the other functions of a bank, such as the purchase and sale of foreign exchange, the issuing of letters of credit, etc. are done by the defendant in New Orleans as appears from the testimony.

The transactions which plaintiff in error (hereinafter called the plaintiff) contends subjected the defendant to service of process in the State of New York are summarized as follows (Plaintiff's brief, pp. 33-35) :

1. The maintenance of a bank account.

As to this plaintiff says :

"It is not necessary for us to contend, nor did we do so in the Court below, that the maintenance only of a bank account in a foreign state and the drawing of checks or drafts on that account, payable in that state, constitutes 'doing business' therein." (Plaintiff's brief, 33.)

2. The maintenance of five other bank accounts.

As to these plaintiff says :

"Even when (as in the case at bar) there are maintained by one institution as many as six such bank accounts in the foreign state—

surely an extraordinary number for one transacting no business there—although the question is not so clear, we still do not need to claim that this alone constitutes 'doing business' there." (Plaintiff's brief, 33.)

3. "A volume of *other* and *different* transactions which necessarily created the important, additional relationship of *principal* and *agent*" "superimposed upon" the foregoing "every day debtor and creditor transactions", as follows:

(a) Letters of credit issued by defendant in which it "agreed with whomever might become the holder of drafts drawn under same, that such drafts, with accompanying documents, might be presented for payment at the Hanover National Bank in New York City," and instructions to Hanover Bank to act as such payer.

(b) Receipt of securities by Hanover Bank from defendant and delivery of same by former to latter's brokers.

(c) Payments by Hanover Bank to various parties in New York for securities and receipt by it of securities from such parties for delivery to the defendant.

(d) Receipt by Hanover Bank from third parties of securities for the account of defendant and holding same for several years on deposit; making substitutions in these securities.

(e) Cashing of checks by Hanover Bank, "under specific instructions from the defendant bank it is true, but drawn by third parties with

whom it had no banking or deposit relations of any kind, which checks were drawn not upon it but upon the defendant bank" (*ibid.*, 34-5).

(f) Receipt by Hanover Bank "from third parties with whom it apparently had no banking relations" (*ibid.*, 35), of deposits of moneys for the account of customers of the defendant.

It is necessary to examine the facts relating to these various transactions as briefly as may be:

1 and 2. The maintenance of bank accounts.

It is apparent from the language of its brief, which we have quoted above, that plaintiff in error does not place much, if any, reliance on these matters. The facts which are set forth in the plaintiff's brief (pp. 5-7) need not be here repeated. The following additional facts are of interest: The defendant was one of 4000 banks which had deposit accounts with the Hanover Bank (R. 28, 119). The account was a general account, "a regular deposit account" (R. 34, 119, 120), and was handled by the Hanover Bank precisely as that of an individual except that interest was allowed on it (R. 120). It had been maintained for upwards of twenty-nine years (R. 29, 118).

The account was credited with the avails of checks, drafts, notes, coupons, and bills of exchange, sent by the defendant to the Hanover Bank by mail or express from New Orleans (R. 118).

In all the methods by which a debit against the account was created, any action taken by the defendant was invariably taken in New Orleans (R. 122, 123) and in every instance the

Hanover Bank before paying out money for the defendant received instructions to do so emanating from the defendant in New Orleans (R. 122). The Hanover Bank did not honor checks drawn upon the defendant without receiving specific instructions to cash such checks and to debit the same to its account (R. 123, 124).

There is ample authority for the proposition that these transactions did not constitute doing business in the State of New York.

In *Honeyman v. Colorado Fuel & Iron Co.*, 133 Fed. 96 the Circuit Court in passing upon a motion to set aside the service of a summons upon a director of the defendant, a Colorado corporation, said:

"The next question is whether defendant was at the time doing business in the state of New York. The complainant urges that it was so doing business, because (1) it had in the city of New York an office, officer, and facilities for registering stock; (2) it kept a bank account in New York; (3) the directors met in New York for the performance of duties; (4) certain transactions relating to capital were in progress in such state.

In 1896 the Central Trust Company of New York filed a bill against the Colorado Fuel & Iron Company in the Circuit Court of the United States for the Southern District of New York, and service of process was made upon defendant's president in the city of New York. Upon motion to set aside the service, it appeared that the company had no office in New York, although the contrary was alleged, except for the registration of the transfers of stock, and that it had a bank account in the city, upon which checks were drawn by officers out of the state. It was shown by defendant that its directors never

met in this state, and that it did no business in the state, other than above stated. Judge Lacombe set aside the service. That ruling must be adopted, so far as it applies to the facts now present."

In *Swann v. The Mutual Reserve Fund Life Association*, 100 Fed. 922, the defendant had deposits in a Kentucky bank and the bank gave defendant's receipts to persons depositing money in the bank for the account of the defendant. It was held that this did not constitute the doing of business in Kentucky and the service of the summons was ordered set aside, the court saying at page 929:

"Becoming a mere depositor in a bank is not doing business in Kentucky, within the meaning of our insurance laws."

As a seeming afterthought, in conclusion of its point, the plaintiff seeks to establish a distinction between bank accounts kept in a foreign state by banks and by others. (Plaintiff's brief, 43-44). But this attempted distinction is of no force. The accounts were handled exactly the same as any other, except that interest was allowed (R. 120). The transactions with the customers of defendant in error were founded exclusively upon and in liquidation of obligations incurred by the defendant in New Orleans.

The rule enunciated in *Toledo Railways etc. Co. v. Hill*, 244 U. S. 49, 53 clearly applies. In that case it was urged that the fact that a corporation had made arrangement for payment of its bonds and coupons at an office in a particular state and the fact that payment there was made on account of the coupons constituted the doing

of business in that state so as to render the corporation liable to suit there. This Court by Chief Justice White held that this contention was without merit and ordered the reversal of the judgment entered below which upheld the jurisdiction of the court. The pertinent language of the opinion follows:

"But we think from either point of view the contention is without merit: *the first because the mere provision for a place of payment in the City of New York of the bonds and the coupons annexed to them at their maturity and their payment at such place was in no true sense the carrying on by the corporation in New York of the business which it was chartered to carry on, however much it may have been an agreement by the corporation to pay in New York an obligation resulting from the carrying on by it of its business in the State of Ohio.* And this view necessarily disposes of the proposition in the second aspect, since the indulging in the fiction of the existence of an office for the payment of coupons could not produce an effect greater than that which could be produced by the real existence of the office."*

While the collection of "time items" is merely an incidental element of a deposit account maintained by any large business concern, plaintiff lays special stress on these (Plaintiff's brief, 42-3). It contends that because the defendant endorsed time items for collection and the Hanover Bank collected them, or if unable to do so returned them to defendant, therefore the Hanover Bank did not acquire title to the item but merely acted as agent for purposes of collection.

* Italics are ours.

Assuming that this is so, the conclusion drawn therefrom by the plaintiff that the defendant was doing business in New York is fallacious. In several cases it has been held that the institution of actions by a foreign corporation in a state does not constitute the doing of business by that foreign corporation in such state.

Caledonian Coal Co. v. Baker, 196 U. S. 432;

Lathrop-Shea & Henwood Co. v. Interior Construction & Improvement Co., 150 Fed. 656.

If this be true then certainly the defendant is not doing business because it collects these time items without suit and by merely presenting the same to the proper party for payment.

If, on the other hand, the assumption by the plaintiff that title to these time items did not pass from the defendant to the Hanover Bank be incorrect the defendant still cannot be held, by reason of the existence of these time items and of its endorsement of them to be doing business within the State of New York. For if title did pass there was a sale of the item from defendant to the Hanover Bank by the endorsement of the defendant in New Orleans and the mailing of the endorsed item to the Hanover Bank which thereupon sustained to the defendant with respect to those items the relation of debtor to creditor. In making such collections in that event the Hanover Bank was the principal with the right conferred upon it by the Negotiable Instruments

Law* of charging the amount back to the defendant as endorser if such collection could not be made.

3 (a). *Letters of Credit.*

As to letters of credit the transactions in evidence were substantially identical. All letters of credit issued by the defendant originated of course in New Orleans (R. 30, Exhibit D, R. 85). Drafts thereunder were presented to the defendant in New Orleans and it there accepted the drafts payable at the Hanover Bank and the drafts thereupon became acceptances of the defendant and its obligations. Upon presentation of such drafts at the Hanover Bank the money was paid by that Bank out of and charged against defendant's deposit account (R. 30, 38). The procedure involved in these transactions is illustrated by the so-called "advice" read into the record (R. 39) from which it appears that the defendant in a letter from New Orleans to the Hanover Bank notified the latter that a certain draft drawn on the defendant at New Orleans and there accepted payable at the Hanover Bank would be presented for payment in New York and requesting that the latter "Kindly honor same upon presentation on or after the dates noted

* Uniform Act: Laws of Louisiana 1904, Act 64, Sec. 66; Laws of New York, 1909, Ch. 43, Sec. 116: "Every indorser who indorses without qualification * * * engages that on due presentment, it shall be accepted or paid, or both,, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it."

below to the debit of our account" (R. 39). In a few instances drafts were presented in New York under the letters of credit of the defendant wherein the letter of credit provided that the drafts were payable in New Orleans or at the Hanover Bank (R. 40) and when presented in New York for payment the account of the defendant at the Hanover Bank was debited with the amount paid out by the latter.

In no instance did the Hanover Bank accept drafts for the defendant by putting the name of the Hanover Bank upon the face of the draft (R. 37).

The record at one place (R. 44) contains an erroneous statement by Mr. Suydam, a vice-president and manager of the foreign department of the Hanover Bank, to the effect that on one occasion the defendant directed the Hanover Bank to issue in New York the letter of credit of the Hanover Bank to another New York bank. At a later place in the testimony (R. 120, 121) Mr. Suydam corrected the error and stated that upon receipt of a telegram from the defendant requesting the Hanover Bank to pay to the American Exchange Bank up to \$422,000 upon delivery to the Hanover Bank of certain documents covering 6000 bags of sugar sold to Bishop Perkins of New Orleans (R. 124) by George Kaiser of Milwaukee, the Hanover Bank notified the American Exchange Bank accordingly and upon receipt of the documents paid for them and charged the amount to the account of the defendant holding the documents subject to further instructions to be received from the defendant (R. 121, 122). The plaintiff refers to the erroneous statement and also to the later statement but does not make it

clear that the latter was in correction of, and nullified the former, and that in fact the Hanover Bank did not issue a letter of credit. In this as in every other instance the transaction originated in New Orleans which was the situs of all the defendant's activities.

The drafts drawn on the defendant under its letters of credit and payable either at or care of the Hanover Bank in addition to those involved in the present litigation are nine in number (Plaintiff's brief, 7-14) including the American Exchange transaction, which did not really involve a letter of credit, but was simply a direction by the defendant to the Hanover Bank to honor a draft and charge the same to its account.

In each and every instance the letters of credit were issued in New Orleans (R. 30) and their terms were communicated to the Hanover Bank or the original or duplicate letter of credit was presented to the Hanover Bank at the time of the presentation of the draft thereunder. All that remained for the Hanover Bank to do was to see that the accompanying documents corresponded with the terms of the letters of credit and if so to make the payments, debiting the account of the defendant therewith. In no instance did the Hanover Bank exercise any discretion in the matter but invariably acted only upon advices received from the defendant in New Orleans (R. 103, 104).

The letter of credit transactions as well as the American Exchange transaction which the plaintiff in error places in the same category are all cited by it in support of its contention that the Hanover Bank acted as agent for the defend-

ant and that, therefore, the defendant must be regarded as doing business in New York. The conclusion does not follow from the premise, even were the correctness of the latter to be conceded.

The premise, however, is incorrect. The relations between the Hanover Bank and the defendant were throughout those of debtor and creditor and the mere fact that the Hanover Bank incidentally rendered certain services for the defendant, which, in furthering their own business, so-called correspondent banks customarily do for their correspondents, does not alter the general relationship of debtor and creditor. All the acts of the Hanover Bank done pursuant to orders of the defendant were in discharge of its obligations as a debtor to the latter. The moneys paid were not the moneys of the defendant but moneys due from the Hanover Bank to it.

The plaintiff seeks to dispose of this aspect of the case by saying: "But is it not so obvious as to be elementary that every time a principal places funds in the hands of his agent, to be disbursed in accordance with his instructions and in connection with the principal's business, that the agency also involves a debtor and creditor relationship?" (Plaintiff's brief, 39-40.) The relation of creditor and debtor is not the same as that of principal and agent. Funds placed in the hands of an agent remain the principal's, whereas a debtor holds no funds of his creditor, but is only under an obligation to pay.

The Hanover Bank was not paid for its services except as any bank is paid, that is, by the profit which it is able to make by treating as its own the funds deposited by its customers. It acted not as agent for the defendant but in

pursuance of its own business and that is borne out by its attempts to obtain commissions for its services not from the defendant but directly from the persons for whom the transactions were carried on (R. 108, 109).

The conclusion drawn by the plaintiff from the erroneous premise is also incorrect. Even were the defendant carrying on transactions within the State of New York through an acknowledged agent that would not constitute doing business in New York unless such transactions if carried on directly by the defendant would have constituted doing business.

See *Toledo Railways etc. Co. v. Hill*, 244 U. S. 49 (*supra*, p. 13) where it was held that indulging in the fiction of the existence of an office could not produce an effect greater than that which could be produced by the real existence of the office.

The letter of credit transactions were instructions to the Hanover Bank to pay from the moneys it owed to the defendant certain sums upon the presentation of sufficient documents. It is practically conceded by the plaintiff that payment of checks by the Hanover Bank for the defendant in New York would not have constituted doing business therein (Brief of plaintiff in error, p. 33). There cannot be any distinction in principle whether the paying bank is to pass upon the correctness of signatures and endorsements only, as in the case of a check, or whether it is to pass upon the correctness of documents presented with a draft, as in the case of the letters of credit. In the one case the bank of origin supplies a sample signature as means of comparison. In the other case it supplies defi-

nite instructions as to the requisites of the documents. In neither instance is any discretion allowed to the paying bank.

Nor is it of importance in this controversy that the goods represented by the bills of lading attached to the drafts were delivered to the defendant in New York through its alleged agent, the Hanover Bank (Plaintiff's brief, p. 38). It certainly would not be contended that a corporation which bought goods abroad to be delivered alongside dock in New York was doing business in New York, yet that is the necessary result if the plaintiff's contention is correct. Goods so bought are paid for in New York, title to them is there transferred to the purchaser and the purchaser thereafter either stores the goods or takes steps to have them delivered to it.

The analogy would also seem to be strong between such a case and the case of a corporation owning land or other property in a state other than that of its domicile, paying taxes thereon and generally caring for such property. Yet in such cases it has been held:

"The mere ownership of lands in New Mexico, or the bringing of suits there to protect its lands against trespasses could not have had the effect to put the company into that Territory for the purposes of a personal action against it based on service of summons upon one of its officers while passing through the Territory on a railroad train."

Caledonian Coal Company v. Baker, 196
U. S. 432, 444 (*supra*, p. 15).

The plaintiff also attaches importance to the words contained in the letter from the Hanover

National Bank to the American Exchange National Bank, dated May 12, 1920, to the effect that "We [the Hanover National Bank] are acting merely as agents of the Whitney Central National Bank of New Orleans" (Brief of plaintiff in error, p. 36). This statement can have no probative value for it is merely a layman's conclusion as to a relationship which might well puzzle a lawyer and which furthermore was merely part of a form letter which was not communicated to the defendant in error (R. 138).

The fact that upon certain contingencies the defendant herein might have been a proper party plaintiff to a suit in the State of New York can not properly be urged in support of the contention that defendant has subjected itself to the New York jurisdiction (Plaintiff's brief, 37). A foreign corporation may bring suit in a jurisdiction without itself being liable to an independent suit in that jurisdiction.

Caledonian Coal Company v. Baker
(*supra*, pp. 15, 21);

Lathrop-Shea & Henwood Co. v. Interior Construction & Improvement Co.
(*supra*, p. 15).

The plaintiff further argues:

"And if in doing such business the Hanover Bank was acting solely as agent for the defendant bank, and attending to *its* interests, must it not necessarily follow that the Whitney Central National Bank was doing business within the jurisdiction?" (Plaintiff's brief, 37).

The Hanover Bank was not "acting solely as agent for the defendant bank" and therefore it

does "not necessarily follow that the Whitney Central National Bank was doing business within the jurisdiction" (*id.*).

The testimony in regard to the letter of credit transactions, as well as the testimony heretofore, and hereafter to be referred to all establish two things, one, that *the defendant's business is done in New Orleans*, the other, that *the Hanover Bank's business is done in New York*. While there were many transactions between the two institutions, neither left its own domicile in the transacting of them and neither did business elsewhere than in its own domicile. The Hanover Bank never went to New Orleans nor did the defendant ever come to New York. The things done by the Hanover Bank were done as its own banking business, albeit as correspondent for the Whitney Central. In short, the business done in New York was the business of the Hanover Bank and the defendant in error was never here to transact business.

3(b), 3(c) and 3(d). Purchase and Sale of Securities.

Coming now to the transactions which the plaintiff in error has grouped under the head "*Purchase and Sale of Securities*" (Plaintiff's brief, 40-42), we again find the erroneous conclusion that acts done through an agent constitute doing business in the state even though they would not if done directly by the principal.

It was testified that beginning January, 1921, J. S. Bache & Company, New York brokers in stocks and commodities, who have a deposit account with the defendant, sold certain liberty

bonds for the defendant (R. 139, 140). The bonds in question were received by Bache & Company from the Hanover Bank against payment to the Hanover Bank of the proceeds of the sale (R. 140).

The sales in question were made by Bache & Company for the defendant pursuant to notification from it written in New Orleans directing them to sell certain bonds for the account of the defendant, stating further that the bonds had just been mailed from New Orleans to the Hanover Bank and that the Hanover Bank would deliver same to Bache & Company upon receipt of the proceeds of sale (R. 141-143).

All these transactions between the defendant and Bache & Company took place between January 13, 1921, and March 14, 1921, and were complete on the latter date (R. 144). It is clear that this was an isolated bond sale in New York.

Under any view these transactions with Bache & Company in the sale of bonds cannot be construed as doing business within the state. Stocks and bonds must be sold upon a stock exchange in the regular order of business. There are many states in the Union in which no stock exchange is located so that were it held that the selling of stock and bonds constitutes doing business in the state where they were sold every resident of the states without exchanges would have to subject himself to the laws of some other state if he desired to purchase or sell stocks or bonds.

The contention advanced by the plaintiff that because a foreign corporation not domiciled here occasionally sells or buys securities upon the New York Stock Exchange it is, therefore, doing

business here is similar to the proposition emphatically rejected by the Supreme Court of the United States in the case of *Philadelphia & Reading Railway Co. v. McKibbin*, 243 U. S. 264, 268, where the court said:

"Obviously the sale by a local carrier of through tickets does not involve a doing of business within the state by each of the connecting carriers. *If it did, nearly every railroad company in the country would be 'doing business' in every state.*"

As the only way the stocks or bonds can be sold upon a stock exchange is through a broker it cannot be urged that such a sale made by the defendant constituted doing business in the State of New York nor is any force added to such an argument by the delivery of the bonds to the broker through the interposition of an intermediary acting for the defendant, nor by the receipt of the avails of the sale by that intermediary.

The sale was in effect made by correspondence, the securities being sent here by the defendant and the instructions given by it through the mail.

In *Clews v. Woodstock Iron Company*, 41 Fed. 31, a motion was made to set aside the service of the summons upon the Iron Company. The facts in the case are sufficiently indicated by the following extract from the opinion of the court which granted the motion:

"The only business which it had done up to the 18th July was the borrowing of money upon its bond and mortgage, and the obtaining from the stock exchange of the privilege of having such bonds called on the list of securities dealt in on its floor. *It could ap-*

* Italics are ours.

parently have secured this privilege, and could have sold its bonds by correspondence. It kept no office here. It did not continuously, or even for a period of some duration, carry on here the business which it was organized to carry on, and by the regular transaction of which it gave evidence of its continued existence. It cannot, therefore, be held under the authorities that the defendant was, at the time when Tyler was served, engaged in business in this state so as to make service of the summons on him efficient to bind the corporation."

Citing authorities including *Good Hope Co. v. Railway B. F. Co.*, 22 Fed. 635, in which it was said at p. 637:

"In this case the president of the defendant was here in his representative character, but the corporation had never been practically engaged in business here. It had made purchases here occasionally, but it could have made them by correspondence as well as by the presence of its agents here. If the purchases had been made by correspondence it could be as logically urged that the corporation was engaged in business here as it can be now."

The doctrine of the last two cases is approved in *Hazeltine v. The Mississippi Valley Fire Insurance Company*, 55 Fed. 743, 748.

The receipt and delivery of securities for the account of banks located in other cities is the common practice of banks. Mr. Suydam testified that the Hanover Bank makes deliveries of securities "for nearly every bank in the country" (R. 78).

* Italics are ours.

The other transactions referred to by the plaintiff in its brief under this heading are merely minor transactions relating to the transfer of shares of stock and to payments of taxes incidental thereto. The owner of stock has no choice as to the place of its transfer and must seek the location of the transfer agent for that purpose. In the same way the owner must pay taxes wherever the same accrue. Having such transfers made and paying such taxes can certainly not be construed as doing business in the place where the transfer agent is located or in the state which has imposed the taxes. It follows that doing these same acts through an agent cannot be construed as doing business in such localities.

3(e) and 3(f). *Receipt of Moneys for Account of Defendant and Payment of Checks by Hanover National Bank.*

At pages 43-45 of its brief the plaintiff discusses the receipt of payments in New York for account of customers of defendant and the payment of checks in New York drawn by customers here upon the defendant.

The testimony showed that checks drawn upon the defendant were not cashed by the Hanover Bank unless the latter "had specific instructions from the Whitney Central National Bank * * * to so cash it and charge their account" (R. 124). Such transactions are no different than if the defendant had endorsed the check and guaranteed the previous endorsements. Had such checks then been cashed by a New York bank relying either upon the general credit of the defendant or upon funds of the latter in the hands of the paying bank, it would certainly not be contended that

the defendant was by reason thereof doing business in New York.

These as well as all other payments made for the account of customers of defendant were made by the Hanover Bank on express instructions received pursuant to the regular custom of banks by mail or telegraph from the defendant in New Orleans. Mr. Suydam said:

"I would call it a regular transfer of exchange from one city to the other, the same way as a customer or client of the Hanover National Bank would come in and purchase from us a mail transfer or telegraphic transfer on London. We would handle it in the same way as the Whitney Central National Bank would handle a transfer from New Orleans on New York. * * * I will say it is the custom among banks to instruct their New York friends to charge their account and pay certain people in this city or other cities certain amounts of money by order of somebody in New Orleans." (R. 81.)

Mr. Suydam testified to an instance in which the defendant performed in New Orleans the same kind of service for the Hanover Bank in New York. A credit of \$1000. was given to the defendant by the Hanover Bank to cover a request made by the Hanover Bank of the defendant to pay that amount to a Mrs. F. M. Montague by order of Lloyd's Bank, Ltd., London. (R. 80.)

With reference to the contention that

"Where the Hanover received deposits from third parties for the account of customers of defendant bank it acted purely for the Whitney Central National Bank as a bank of deposit for the latter's customers' benefit" (Plaintiff's brief, 44),

the testimony is as follows:

"Q192. Do you ever receive from any other bank, any other out of town banks funds for the credit of the Whitney Central National Bank on the books of your bank? A. Frequently.

"Q193. With the instructions as to the New Orleans bank that the money is for the use of one of their customers? A. The credits we usually receive from out of town banks are for the credit of the Whitney Central National Bank of New Orleans without any restrictions. Any arrangements which the out of town bank would make would be made direct by them with the Whitney Central National Bank.

"Q194. Then in such cases, you do receive instructions from the Whitney Central National Bank to hold that fund? A. That goes in the general deposit account. We have no special instructions. We receive from such and such a bank advices, which are melted in with the general deposit account." (R. 45, 46.)

It is obvious that the Hanover Bank in receiving such moneys acts simply as the bank of the defendant without knowledge of the disposition which it will in the future make of the money. With respect to these deposits for the credit of the defendant the Hanover sustains to the defendant the relation of debtor to creditor. Since the Hanover Bank has no knowledge or information concerning the customers of the defendant the funds so deposited are made available to those customers whether located in New York or elsewhere only by virtue of a check or other equivalent express direction of the defendant sent by it from New Orleans to the Hanover Bank directing

the latter to pay from the account of the defendant a specified sum of money to the individual in question.

All these transactions were merely methods of meeting obligations resulting from the carrying on of defendant's business in Louisiana. They did not constitute doing business in New York.

Toledo Railways &c. Co. v. Hill, 244 U. S. 49, 53 (*supra*, pp. 13, 20).

Finally, in concluding the consideration of the specific matters which the plaintiff contends constituted doing business in the State of New York it should be noted that the Hanover Bank has never sold commercial paper of defendant's customers nor has the defendant ever re-discounted with the Hanover National Bank the commercial paper of its customers (R. 44), in no instance has the Hanover Bank sold defendant's bank acceptances to any one (R. 34), nor has it ever purchased bank acceptances for others for the account of the defendant (R. 35), and no draft drawn by a third party upon the defendant was ever paid by the Hanover Bank (R. 30).

The relation between the defendant and its correspondents is not of recent origin but "has been common in banking practice as long as I have been here, in the 29 years of my service" (Suydam, R. 133). This practice prevailed long before the Federal Reserve System was in force (*id.*).

These relations are customary between all banks and their correspondents. With respect to letters of credit Mr. Suydam testified:

"Why, letters of credit have been handled more by banks in the inland in the last ten or fifteen years. It is a common practice, however, all over the country, to handle letters of credit similar to the manner in which we are handling the Whitney Central National Bank" (R. 134).

It is true that the practice by banks of issuing letters of credit in order to finance importation of merchandise has increased materially in the past ten years but it had prevailed prior to that time (R. 134).

Mr. Suydam further testified that the instances mentioned by him where the Hanover Bank had acted pursuant to the instructions of the defendant were

"typical of all transactions that we handle for other banks. Some of them use a little different wording, for instance, a bank in Philadelphia will say, in issuing its own credit 'through' the Hanover National Bank; a bank in Chicago will issue its own letter of credit and will say 'payable at the Continental and Commercial National Bank' or 'The Hanover National Bank.'

"By the Master:

"Q548. It is merely a question of phraseology? A. Just a question of wording" (R. 134).

In this connection it should also be borne in mind that the Hanover Bank alone handles similar bank deposits for over 4,000 banks in the United States (R. 119). The bank deposits of

banks in other cities "are all handled in the same fashion according to the business that they send us. Some localities will send a different class of business than another." (*id.*)

THE LAW.

In order to constitute the doing of business to give the Court jurisdiction of a foreign corporation, the transactions relied upon must be

"Such in character and extent as to warrant the inference that the corporation has subjected itself to the jurisdiction and laws of the district in which it is served and in which it is bound to appear when a proper agent has been served with process."

St. Louis S. W. Ry. v. Alexander, 227
U. S. 218, 227.

The plaintiff states and seeks to negative what it conceives to be a contention of the defendant based upon the similarity of the transactions conducted by a great number of other national banks within the State of New York (Plaintiff's brief, 28). The plaintiff assumes that the defendant and other national banks are doing business in New York from which it draws the conclusion that that being so they are subject to process in New York. The defendant claims that the Whitney Central National Bank is not doing business within the State of New York and in support of that contention urges the same reasoning that was in the mind of the Supreme Court of the United States when it said *Philadelphia & Reading Railway Co. v. McKibbin*, 243 U. S. 261, at p. 268:

"Obviously the sale by a local carrier of through tickets does not involve a doing of business within the state by each of the connecting carriers. *If it did, nearly every railroad company in the country would be 'doing business in every state.'*"* (*supra*, p. 25.)

But the defendant is not limited to that reasoning which is in the nature of a *reductio ad absurdum*. Under the federal statutes referred to in Point III hereof (pp. 49, ff.) national banks cannot do business outside of the place of their original domicile. Therefore to hold that the defendant is doing business in the State of New York when it is shown that the only transactions by it in that state are similar to transactions conducted by practically every other national bank in the country would be to hold that every such national bank is guilty of a violation of the law and subject to forfeiture of its charter. It does not seem possible that any court would indulge in any such violent presumption nor should it indulge in the presumption which would be corollary to the former, to wit, that the Federal authorities in charge of national banks have permitted a general and long continued violation of the laws relating to national banks.

The plaintiff asks:

"Had the defendant bank rented a small space in the office of the Hanover National Bank, put up a sign inscribed with the words 'Whitney Central National Bank' and paid one of the clerks of the Hanover a salary for attending to this business for its account, could there be any question in even the narrowest mind that it would be 'doing business' within the State of New York?" (Plaintiff's brief, 35.)

* Italics are ours.

That question has been answered by this court:

"Even hiring an office, the employment by a foreign railroad of a 'district freight and passenger agent * * * to solicit and procure passengers and freight to be transported over the defendant's line,' and having under his direction 'several clerks and various traveling passenger and freight agents' was held not to constitute 'doing business within the State.' *Green v. Chicago, Burlington & Quincy Ry. Co.*, 205 U. S. 530. Nor would the fact, if established by competent evidence, that 'subsidiary companies' did business within the State, warrant a finding that the defendant did business there. *Peterson v. Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364."

Philadelphia & Reading Railroad Co. v. McKibben, 243 U. S. 264, 268 (*supra*, pp. 25, 32).

In *Green v. Chicago, Burlington & Quincy Railroad Co.*, 205 U. S. 530, the Railroad Company was held not to be doing business within the state so as to render it liable for service although it hired at office and employed an agent for the solicitation of freight and passenger traffic, designated an employee as district freight and passenger agent and in many ways advertised these facts to the public. In some cases for the convenience of shippers who had received bills of lading from the initial line for goods routed over the defendant's lines the district agent gave in exchange bills of lading over the defendant's line.

In *Goepfert v. Compagnie Generale Transatlantique*, 156 Fed. 196, the defendant was a corporation organized under the laws of France

operating a line of steamships between Havre and the City of New York. It had a general agent in New York to transact all its business in the United States and Canada. It had numerous ticket agents throughout the United States, among others a company in Philadelphia. Such company sold tickets over defendant's line, among others, at its Philadelphia office receiving a commission therefor and also received an annual payment on account of its office rent. It had the defendant's name on its office door and also the names of other steamship and railroad lines. The court held that the defendant was not doing business in the State of Pennsylvania so as to authorize the service of summons upon it.

In *Graustein v. Rutland Railroad Co.*, 256 Fed. 409, the defendant, a Vermont corporation, maintained an office in Massachusetts and employed an agent there who described himself upon the door of his office as "General Agent Rutland Railroad." He kept there and used with the defendant's assent stationery marked "Rutland Railroad." The rent of the room was paid by the defendant. None of the tickets was kept there but were obtained from other sources. The agent's duties were to solicit business and to take orders for tickets. He was designated on the folders issued by the defendant as one of a number of ticket agents through New England. He also occasionally discussed the adjustment of claims although he does not appear to have decided any question of that sort. A "tourist agent" in Boston was supplied with a small stock of local tickets by the defendant which he was authorized to sell on its account and to procure

other tickets from the Boston & Maine Railroad, acting as agent for the defendant. It was held that the defendant did not do business in the State of Massachusetts.

See, also,

McGuire v. Great Northern Railway Co.,
155 Fed. 230, and

Case v. Smith, Lincolncarver & Co., 152
Fed. 730.

The plaintiff cites no authorities in support of its contention that the matters testified to indicate that the defendant has transacted business in New York so as to make it subject to service of process in that state. The authorities cited by it are general in character, and are in some cases misleading. Such for instance is *Barrow Steamship Co. v. Kane*, 170 U. S. 100, cited by it at page 32 of its brief. In that case the question certified to the Supreme Court was based on a statement of facts, which included the following:

"It [the defendant] does business in the State of New York * * *."

There the question now in issue was admitted and was therefore, not considered by the court.

In *St. Louis, S. W. Ry. Co. v. Alexander*, 227 U. S. 218 (Plaintiff's brief, 32), the defendant had a general eastern freight agent, jointly with another line, in New York.

"With this joint freight agent at the office in New York the matter of the plaintiff's claim was taken up and considered, and correspondence concerning it was had through his office, and a settlement of the claim attempted. It was only after such negotia-

tions for a settlement had failed that this action was brought. Here, then, was an authorized agent attending to this and presumably other matters of a kindred character, undertaking to act for and represent the company, negotiating for it and in its behalf declining to adjust the claim made against it. In this situation we think this was the transaction of business in behalf of the company by its authorized agent in such manner as to bring it within the District of New York, in which it was sued, and to make it subject to the service of process there" (p. 228).

In *International Harvester Co. v. Kentucky*, 234 U. S. 579 (Plaintiff's brief, 26, 32) there was a continuous course of solicitation of orders by general agents, continuous shipments of machines into the state pursuant to the orders received, and authority in the agents to receive payment in money, check, or draft, and to take notes payable at banks in Kentucky. Yet even under those circumstances the court said that "the case is a close one" (p. 585). The distinction between that case and the one at bar is obvious.

In *International Text Book Co. v. Pigg*, 217 U. S. 91 (Plaintiff's brief, 32) an entirely different question was presented, to wit, the constitutionality of a state statute relating to conditions imposed upon foreign corporations conducting business in the state. In that case the plaintiff's agents regularly solicited business in the state and received and forwarded money resulting from the business so obtained.

In *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245 (Plaintiff's brief, 27, 32, 52) the court considered the validity of a state statute

"providing that an agent (of a foreign insurance company) competent by authority of the company to settle and adjust losses should be competent to represent the company for the service of process." This was held valid, and the court further held that the court below had before it sufficient evidence to warrant a finding that the defendant was doing business in the state, it having been shown that the defendant had outstanding policies in the state on which it collected premiums and adjusted losses therein.

The transactions considered in *Pennsylvania Lumbermen's Insurance Co. v. Meyer*, 197 U. S. 407 (Plaintiff's brief, 32) were similar to those involved in the *Commercial Mutual* case.

The cases cited by plaintiff may be disposed of, therefore, by directing attention, as the Master does, to the fact that no case has been found holding that a bank is amenable to process in the jurisdiction of its correspondent.

"Now, when it is remembered that this relationship of correspondent banks is no new thing and that the volume of their business is enormous, it seems significant that in no case that has been found was the proposition advanced that a bank was amenable to process in the jurisdiction of its correspondent" (R. 170).

In conclusion, were banks to be limited in their transactions through correspondents to those matters which would not be included in plaintiff's definition of what constitutes "doing business," they would have no use for correspondents. Even a safe deposit box, with someone who had access thereto, would if plaintiff were correct, render the

bank liable to suit in the state where the box was kept.

The transactions by the Hanover and other banks were their own business, for which they were paid as banks are always paid.

The defendant in error was not carrying on business in New York, and whether its transactions with its correspondents were purely within the relationship of debtor or creditor, or whether the correspondent incidentally bore the relation to the defendant of agent to principal is immaterial.

II.

The president of the defendant was not transacting its business in the State of New York at the time of the attempted service of process.

The plaintiff seeks to have the Court draw an inference favorable to itself from the failure of the president of the defendant to appear as a witness. No such presumption can be indulged in.

The defendant cannot be compelled to prove the negative.

"In every case the question with which a federal court is first confronted is that of its jurisdiction, both over the subject-matter and of the party; and this jurisdiction must affirmatively appear upon the record. So far has this doctrine been carried that judgments have been frequently reversed upon appeal because the records did not disclose the essen-

tial jurisdictional facts."

*Central Grain & Stock Exchange v.
Board of Trade*, 125 Fed. 463, 466.

See also:

*Jackson v. Delaware River Amusement
Co.*, 131 Fed. 134;

St. Clair v. Cox, 106 U. S. 350.

In the *Central Grain* case an order was granted suspending the hearing before the Master upon a motion to quash the service until the defendant should produce its president as a witness and in the meantime granting a temporary injunction as prayed in the bill. The order was reversed both because in the state of the record the court was without jurisdiction to consider the case on the merits, and also because it was without rightful authority to compel the defendant to produce its officer as a witness.

In *Earle v. Chesapeake & Ohio Ry. Co.*, 127 Fed. 235, it was said at page 236:

"Nowhere upon the record is there any averment that the defendant is doing business in the state of Pennsylvania, and, in view of this fact, the absence of such an averment from the marshal's return is said to constitute a fatal defect therein. In my opinion, this proposition is sound. In the statement of claim, which was filed when the summons was issued, the defendant is described as a railway corporation of the state of Virginia. Prima facie, therefore, its business of transportation is conducted there; and although, no doubt, it may depart of its business in this state, there is certainly no presumption that this is true. The corporation cannot be here for any purpose unless it is transacting the business for which it was organized. The mere presence of some

of its officers or agents does not justify the conclusion that they have brought the corporation with them."

The Court in the latter case also points out the distinction between motions of this sort in state and in federal courts in the following language:

"In the state courts of general jurisdiction it may be true that such a return as is now under consideration would be *prima facie* valid; but, in a federal court of limited jurisdiction, it is hardly necessary to say that every jurisdictional fact must appear upon the record. Therefore the present record should show somewhere that the defendant is doing business in this commonwealth, and, as the fact is nowhere else averred—neither in the praecipe for the summons, nor in the summons itself, nor in the statement of claim—the marshal's return should have supplied the essential fact" (p. 237).

Even were it not for this distinction the New York cases cited by plaintiff* (Plaintiff's brief, 50) do not apply on the facts. In both of those the question was whether the service had physically been made. Here there is no dispute of fact, for just what occurred appears from the mouth of the plaintiff's own witness, and upon the facts so testified to it is clear that the purported service was of no effect. We shall refer to this shortly hereafter.

* *Smith v. Hickey*, 25 N. Y. App. Div. 105, and *Dutton v. Smith*, 23 id. 108.

Were the defendant compelled to prove negatively that it was not doing business in the State of New York the plaintiff could accomplish one of the results which the National Banking Law and the provisions relating to suits against national banks seek to obviate, that is, a national bank could be compelled to produce its officers and books in a state far distant from its domicile and in this way its business would be seriously inconvenienced if not altogether suspended.

Charlotte Nat'l Bank v. Morgan, 132 U. S. 141, 145;

Crocker v. Marine National Bank of New York, 101 Mass. 240.

At the top of p. 52 of its brief plaintiff in error asks the following question:

"If Mr. Bouden during this important and somewhat ticklish conference with Mr. Kenzel was not transacting business for and of the Whitney Central National Bank, *what was he doing?*"

That question may also be answered by the courts. The Circuit Court, Western District of New York, said in *Buffalo Sandstone Brick Company v. American Sandstone Brick Machinery Co.*, 141 Fed. 211:

"* * * I am satisfied that the visit of the president of the defendant to ascertain the nature of plaintiff's complaint in relation to the machinery installed pursuant to contract did not thereby confer jurisdiction upon this court,"

and the Circuit Court, Southern District of New York, said in *Wilkins v. Queen City Savings Bank & Trust Co.*, 154 Fed. 173:

"I do not understand that *Mutual Life Ins. Co. v. Spratley*, 172 U. S. 602, 19 Sup. Ct. 308, 43 L. Ed. 569, is authority for the proposition that presence of an officer of a foreign corporation in this state for the purpose of discussing a proposed adjustment of the single controversy between it and plaintiff is sufficient to establish such a 'doing business within the state' as will take the case out of the rule laid down in *Goldey v. Morning News*, 156 U. S. 518, 15 Sup. Ct. 559, 39 L. Ed. 517, and *Conley v. Mathieson Alkali Works*, 190 U. S. 406, 23 Sup. Ct. 728, 47 L. Ed. 1113."

The case of *Commercial Mutual Accident Co. v. Davis*, 213 U. S. 245 (*supra*, p. 43), is sufficiently distinguished by the distinction pointed out by Judge Lacombe in the *Wilkins* case *supra* with reference to the *Mutual Life* case. It is also distinguished by the facts as testified to on behalf of the plaintiff.

The plaintiff in error contends that the interview of Mr. Bouden, the president of the defendant in error, with the witness Kenzel, the deputy governor of the Federal Reserve Bank of New York, "was business, and business of the utmost concern to the Whitney Central Bank." (Plaintiff's brief, 52). There is no force in this assertion.

The witness had general supervision of the entire investment policy of the Federal Reserve Bank of New York, which purchases acceptances of other banks (R. 145). On April 13, 1921 witness had the conversation in question with Mr. Bouden (R. 145). The latter came to the witness' office at No. 15 Nassau Street, New York City.

"Mr. Bouden called and we had a chat for an hour or so and discussed a good many things, such as the business conditions in New Orleans, his bank, the branch of the Federal Reserve Bank at New Orleans, but more particularly he called to discuss with me the status of the bills of the Whitney Central National Bank in this market, which he felt had been adversely affected as the result of this controversy between the Bank of America and his bank and he wished to assure me that their action in declining to pay such drafts was justified and he wished me to be convinced of that fact. That was the sum and substance of the entire interview" (R. 146).

"I explained to him, or rather, he mentioned the adverse effect on his bills if the Federal Reserve Bank of New York would not purchase them or discount them. I explained to him that the Federal Reserve Bank of New York was never the primary purchaser of bills; they only took such as had gone through the market, that is, those which had been first purchased by someone else and the banking endorsement added and then they might be offered to us. We confine ourselves to this sort of paper. I explained to him that probably it was the outside market more than the Federal Reserve Bank of New York, which would reflect any marked attitude toward his paper" (R. 146).

Prior to the declination of these bills by the Federal Reserve Bank various officers of the Bank of America had given to Mr. Kenzel certain information with respect to the pending litigation (R. 149, 150). Mr. Kenzel himself caused certain inquiries to be made and thereafter the bills were declined (R. 150). He knew, at the time of his

interview with Mr. Bouden, that litigation was pending in New Orleans between the parties to the present litigation (R. 151).

Mr. Kenzel testified that the Federal Reserve Bank of New York buys the paper of banks physically located all over the United States (R. 152, 153) and that the paper so bought bears "the endorsement or name of more than the original bank issuing the acceptances" (R. 149).

"The Federal Reserve Bank of New York was never the primary purchaser of bills; they only took such as had gone through the market, that is, those which had been first purchased by someone else, and a banking endorsement added, and then they might be offered to us" (R. 146).

The bank acceptances of the defendant in regard to which there seems to have been some controversy and which the Federal Reserve Bank of New York refused to buy were not offered to the Federal Reserve Bank by the defendant. (R. 152.)

"XQ76. You do not know, I think you said, whose name was upon this paper, in addition to the name of the Whitney Central National Bank? A. That paper which we declined to purchase? No, sir, I do not.

"XQ77. The paper was not offered to you by the Whitney Central National Bank, was it? A. No" (R. 152).

Mr. Kenzel's testimony shows that nothing more occurred than a conversation between him and Mr. Bouden relative to the attitude of the Federal Reserve Bank towards the defendant's acceptances. There was no effort made to compromise

or settle any difficulties that had arisen nor to do anything other than to convey to Mr. Kenzel certain information as to the status of litigation which was pending in the State of the defendant's domicile.

Under the decisions this does not constitute doing business by the defendant in error in the State of New York nor render it subject to service of process in this jurisdiction.

Even had Mr. Bouden been here for the purpose of discussing a proposed adjustment of the controversy in which his bank was engaged this would not have been "doing business within the state."

Wilkins v. Queens City Savings Bank and Trust Company, 154 Fed. 173 (*supra*, p. 42).

In *Main v. The Second National Bank*, 16 Fed. Cases, p. 509, case No. 8976, it was held that a Chicago bank was not found within the Western District of Wisconsin within the meaning of the old 11th Section of the Judiciary Act of 1789 merely because service of process was made upon the cashier of the bank within that district.

Even though the officer served is present in the state on business of the corporation service on him is invalid unless the corporation is itself doing business in the state.

Craig v. Welch Motor Car Co., 165 Fed. 554, 555;

Cody Motors Co. v. Warren Motor Car Co., 196 Fed. 254, 255;

Ostrander v. Deerfield Lumber Co., 206 Fed. 540, 544;

Noel Construction Co. v. Smith, 193 Fed. 492, 496;

Hoyt v. Ogden Portland Cement Co., 185 Fed. 889;

Wilkins v. Queens City Savings Bank, 154 Fed. 173 (*supra*).

In *Craig v. Welch Motor Car Co.*, *supra*, Ward, C. J., said:

"The affidavits satisfy me that Swart was not acting for the defendant while in this State, and, if he were, a single transaction would not be enough to make service on him as a non-resident director good service on the defendant in the federal courts. *Conley v. Matheson Co.*, 190 U. S. 406; *Pennsylvania Lumbermen's Insurance Co. v. Meyer*, 197 U. S. 407; *Good Hope Co. v. Railway Co.* (C. C.) 22 Fed. 635; *Boardman v. S. S. McClure Co.* (C. C.) 123 Fed. 614; *Louden Co. v. American Co.* (C. C.) 127 Fed. 1008; *New Haven Pulp Co. v. Manufacturing Co.* (C. C.) 130 Fed. 605; *Buffalo Glass Co. v. Manufacturers' Glass Co.* (C. C.) 142 Fed. 273."

The attention of the court is further called to certain New York cases in which the court was dealing not with national banks which are strictly limited with respect to the place in which they may by law do business, but with commercial corporations which may do business anywhere.

In *Lanzner v. Allyn Brass Foundry Company*, 179 N. Y. App. Div. 892, an appeal had been taken from the refusal of the Special Term to set aside the service of a summons upon an officer of the Foundry Company, a foreign corporation which maintained no office within the State and which transacted no business in the State except as shown by the opinion.

The opinion of the Special Term Judge, which does not seem to have been reported, and for which reference must be had to the case on appeal, was as follows:

"The defendant's president when served with the summons was engaged within the state on business of the defendant. As appears from the moving affidavits he was 'endeavoring to bring about an adjustment and settlement of certain matters in dispute between plaintiff's alleged assignors and the defendant.' Under these circumstances he was not 'casually' within the state or engaged simply upon his own affairs, and jurisdiction could be obtained within the principles of the decision in *Riverside Mills v. Hencfer*, 237 U. S. 189 as followed in *Robert Dollar Co. v. Canadian C. & F. Co.*, Ct. App. Law Journal March 23, 1917. Motion to vacate service denied."

The Appellate Division reversed the order below with the following memorandum opinion:

"Order reversed with \$10. costs and disbursements and motion granted with \$10. costs on the authority of *Robert Dollar Co. v. Canadian Car Co.*, 220 N. Y. 270."

See also *Berner v. Collier Co.*, 179 N. Y. App. Div. 732.

In that case service was made upon defendant's officer who was staying in New York, although on his way to Boston, his purpose being, as he swore,

"to confer with Major Lee White, the president of the Broadway Motor Truck Company, relative to a certain claim of said Broadway Motor Truck Company against the defendant corporation and to learn the nature of said claim of said Broadway Motor Truck Com-

pany; that deponent transacted no business of any kind or description for the defendant corporation while in the said City of New York.' ”

The Court said :

“Plaintiff is unable to show that Davock transacted any business here save certain alleged ‘negotiations.’ Upon this record it is conclusively established that the defendant was not doing business in this state at the time of the service of the summons and complaint herein, nor was Davock, its vice president, engaged about its business to such an extent or in such a sense that his casual visit conferred jurisdiction upon the courts of this state. (*Lanzner v. Allyn Brass Foundry Co.*, 179 App. Div. 892; *Dollar Co. v. Canadian Car & Foundry Co.*, 220 N. C. 270.) ”

It is plain that both upon the law and the facts Mr. Bouden’s visit was not such as to confer jurisdiction on the District Court.

III.

To hold on the facts disclosed by the testimony that the defendant is doing business in New York necessarily involves the conclusion that every National bank in the United States is doing business illegally and is subject to charter forfeiture.

Testimony was given before the Master of certain transactions between the defendant and its New York correspondents. Similar transactions

with correspondents in New York or other cities foreign to their respective places of location and establishment by practically every other national bank in the country are likewise shown to be matters of every day occurrence. Under the National Banking Act the doing of business by a national bank in a place other than that in which it is located and established is illegal and constitutes cause for charter forfeiture, for a national bank is a corporation whose powers are defined and limited by Acts of Congress, authorizing the creation of such institutions.

First National Bank v. Murray, 212 Fed. 140.

The National Banking Act limits strictly the place where a national bank may do business.

First National Bank v. Murray, supra.
Opinions of Attorney General, Vol. 29, p. 81.

The following provisions of the Acts of Congress show the limitations placed by law upon national banks with respect to the doing of business.

One of the requisites of the organization certificate is a statement of

“Second. The place where its operations of discount and deposit are to be carried on designating the state, territory or district and the particular county and city, town or village.”

R. S. Sec. 5134.

Again

"The usual business of each National Banking Association shall be transacted at an office or banking house located in the place specified in its organization certificate."

R. S. Sec. 5190.

For a consideration of R. S. Sec. 5190 just quoted, see *Opinions of Attorney General*, Vol. 29, pp. 81, 98, wherein the following is said by the Attorney General,

"That Sec. 5190, Revised Statutes, properly construed restricts the carrying on of the general banking business by a national bank to one office or banking house in the place designated in the association's certificate of organization."

With respect to obtaining permission to do business in another location the statute provides:

"Any National Banking Association may change its name or the place where its operations of discount and deposit are to be carried on, to any other place within the same state, not more than thirty miles distant with the approval of the Comptroller of the Currency, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the office of the Comptroller of the Currency but no change of name or location shall be valid until the Comptroller shall have issued the certificate of approval of the same."

Act May 1, 1886 (ch. 73, sec. 2, 24 Stat. 18).

National banks may create foreign branches only by virtue of the express provisions of the Act of December 23, 1913 (ch. 6, 38 Stat. 251), as amended by Act of September 7, 1916 (ch. 461, 39 Stat. 755), and by the express provisions of the above statute the bank "shall conduct the accounts of each foreign branch independently of the accounts of other foreign branches established by it and of its home office and shall at the end of each fiscal period transfer to its general ledger the profit or loss accrued at each branch as a separate item."

And R. S. Sec. 5198 as amended by Act of February 18, 1875 (ch. 80, 18 Stat. 316), after prescribing the penalty for usurious transactions by a national bank provides:

"That suits, actions and proceedings against any association under this title may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established or in any state, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases."

Finally it is provided by R. S. Sec. 5219 that "the shares of any National Banking Association owned by non-residents of any state shall be taxed in the city or town where the bank is located and not elsewhere."

It is, therefore, clear that under the limitations prescribed by the Federal Statutes relating to the transaction of business by national banks, such institutions may not do business outside of the place of their domicile.

It is not conceivable that national banks have been permitted for many years persistently and flagrantly to violate the National Banking Act by doing business at places other than the places of their domicile or that they are now being encouraged and abetted in so violating the law by the Federal Reserve Banks through the discount facilities afforded to banks so engaged; but if it is held that the defendant is doing business in the State of New York it follows not only that the defendant is violating the Federal Statutes in regard to national banks but it follows further that practically every national bank in the country is and has been for many years past so violating the law and that all these banks are subject to forfeiture of their charters.

The decision in *Merchants Bank v. State Bank*, 10 Wall. 604, cited by plaintiff (Plaintiff's brief, 54) is of no value in support of its claim. That decision, as previously indicated herein (p. 7) is not to the effect that a national bank may transact its usual business at places other than its regular office. It is more logical to say that in that case the court held that the transactions there in question constituted in their legal effect the transaction of business at the office of the bank, and not elsewhere.

The matter urged in this point did not influence the Court below in its decision (R. 160-171, 173-174), but we believe that it should properly be considered on this appeal so that the important question involved may be authoritatively settled.

IV.

The District Court was without jurisdiction under Section 5198 of the Revised Statutes.

Section 5198 of the Revised Statutes as amended by the Act of February 18, 1875 (ch. 80, Stat. 316), contains two provisions. The first provision of the statute refers to the legal consequences of the commission of usury by a national bank. The second provision, which is wholly disconnected with the first, has reference to the jurisdiction of the district courts over suits by or against national banks. This provision reads as follows:

"That suits, actions and proceedings against any association under this *title* may be had in any circuit, district or territorial court of the United States held within the district in which such association may be established or in any state, county or municipal court in the county or city in which said association is located having jurisdiction in similar cases." *

The defendant, Whitney Central National Bank, is "established" and "located" in New Orleans and not elsewhere for which reason suits against it may be brought under the above statute only in the District Court of the United States for the District of Louisiana.

The statute refers to associations organized under this "title" in which connection it should be noted that the title in question is "National Banks."

* Italics are ours.

In *Crocker v. Marine National Bank of New York*, 101 Mass. 240, in which a national bank "located" and "established" in the City of New York was sued in the state court in Massachusetts, the Court in construing the foregoing section which was then known as the 57th Section of the Act of 1864, C. 106, decided that it was obliged to refuse to take jurisdiction of the action, saying that the act

"Manifests the intention of Congress that each of these associations should be sued either in the federal or in the state courts only in the judicial district in which it is established and in which its officers may be summoned and its books brought into court with the least interruption and inconvenience of its business; and that the election of plaintiffs to sue in any court whatever should be confined within these limits in all cases."

In *Cadle v. Tracy*, 6 Blatchford, 101, 116, the principle upon which rests the decision in *Crocker v. Marine National Bank of New York*, *supra*, was expressly approved and the decision of the state court of New York in *Cook v. The State National Bank of Boston*, 50 Barb. 339, was held to be erroneous and finally in *Charlotte National Bank v. Morgan*, 132 U. S. 141, 145, it seems to have been the view of the court that under Sec. 5198 of the Revised Statutes no action lies against a national bank except in the district in which it is "located" and "established." In this case the Supreme Court cited and approved *Crocker v. Marine National Bank of New York*, *supra*.

The New York cases of *Cook v. The State National Bank of Boston*, 50 Barb. 339, affirmed 52 N. Y. 96; *Robinson v. The National Bank of New-*

berne, 81 N. Y. 385, and *Talmage v. The Third National Bank*, 91 N. Y. 531, in which the courts of New York State had attempted to hold that the word "may" in R. S. 5198, *supra*, was permissive rather than mandatory are, therefore, necessarily disapproved and would not be followed in the federal courts.

See also *Corpus Juris*, Vol. 7, page 836, title "Banks and Banking," in which it is said:

"For jurisdictional purposes national banks are to be deemed residents or inhabitants of the state or district where they are located or established and they cannot be sued in the federal court outside of such district even though process is served on an officer within the district."

This statute is not repealed by the provisions of Act of July 12, 1882 (Ch. 290, 22 Stat. 162), which reads:

"* * * Provided, however, that the jurisdiction for suits hereafter brought by or against any association established under any law providing for National Banking Associations, except suits between them and the United States or its officers and agents, shall be the same as and not other than the jurisdiction for suits by or against banks not organized under any law of the United States which do or might do banking business where such national banking association may be doing business when such suits may be begun; and all laws and parts of laws of the United States inconsistent with this proviso be and the same hereby are repealed."

The 16th subdivision of the 24th section of the Federal Judicial Code, on which plaintiff in error relies (Plaintiff's brief, 58, *ff.*) provides that

District Courts shall have original jurisdictions as follows:

"Of all cases commenced by the United States, or by direction of any officer thereof, against any national banking association, and cases for winding up the affairs of any such bank; and of all suits brought by any banking association established in the district for which the court is held, under the provisions of title 'National Banks,' Revised Statutes, to enjoin the Comptroller of the Currency, or any receiver acting under his direction, as provided by said title. And all national banking associations established under the laws of the United States shall, for the purposes of all other actions by or against them, real, personal, or mixed, and all suits in equity, be deemed citizens of the States in which they are respectively located."

This Court has held that taken together the Act of 1882 and the Act of 1888 (now Sec. 24, subdivision 16 of the Judicial Code), do not give the district courts jurisdiction over actions by or against national banks on the ground that a federal question is involved by reason of a federal corporation being party plaintiff or defendant:

"So far as the mere source of its incorporation rendered suits to which a national bank might be a party, cognizable by the Circuit Courts, that was taken away, but the jurisdiction which those courts might exercise in such suits when arising between citizens of different States or under the Constitution or laws of the United States, except in that respect, remain unchanged."

Petri v. Commercial National Bank, 142
U. S. 644, 649.

"The necessary effect of this legislation was to make national banks for purposes of suing and being sued in the Circuit Courts of the United States, citizens of the States in which they were respectively located, and to withdraw from them the right to invoke the jurisdiction of the Circuit Courts of the United States simply upon the ground that they were created by and exercised their powers under Acts of Congress. *No other purpose can be imputed to Congress than to effect that result.*" *

Continental National Bank v. Beauford,
191 U. S. 119, 123-124.

See also:

Ex Parte Jones, 164 U. S. 691;

Herrmann v. Edwards, 238 U. S. 107.

The plaintiff in error to the contrary notwithstanding there are reasons of public policy for not permitting national banks to be sued elsewhere than in the courts of their domicile. Could they be sued elsewhere, their books, papers and records would be subject to constant removal from their banking offices, and in this way a practical suspension of their business would be effected.

Charlotte Nat'l Bank v. Morgan, 132 U. S. 141, 145 (*supra*, pp. 42, 55);

Crocker v. Marine Nat'l Bank, 101 Mass. 240 (*supra*, pp. 42, 55).

The business of a bank is probably more dependent on constant and easy access to its books than that of any other concern, and, therefore, in the case of national banks, which are *quasi* public in their nature it is a matter of public concern that the books should not be rendered unavailable for continued use.

* Italics are ours.

As in the case of the next preceding point, the matters discussed under this point were not considered by the Court below in arriving at its decision, but they should be authoritatively settled by the Court of last resort.

The order entered by the Court below should be affirmed.

Respectfully submitted,

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